

San Francisco Law Library

No.

Presented by

.....

EXTRACT FROM BY-LAWS.

Section 9. No book shall, at any time, be taken from the Library Room to any other place than to some court room of a Court of Record, State or Federal, in the City of San Francisco, or to the Chambers of a Judge of such Court of Record, and then only upon the accountable receipt of some person entitled to the use of the Library. Every such book so taken from the Library, shall be returned on the same day, and in default of such return the party taking the same shall be suspended from all use and privileges of the Library until the return of the book or full compensation is made therefor to the satisfaction of the Trustees.

Sec. 11. No books shall have the leaves folded down, or be marked, dog-eared, or otherwise soiled, defaced or injured. A party violating this provision, shall be liable to pay a sum not exceeding the value of the book, or to replace the volume by a new one, at the discretion of the Trustees or Executive Committee, and shall be liable to be suspended from all use of the Library till any order of the Trustees or Executive Committee in the premises shall be fully complied with to the satisfaction of such Trustees or Executive Committee.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

STANDARD PORTLAND CE-
MENT CORPORATION, a
corporation,

Plaintiff in Error,

vs.

ERNEST E. EVANS, GEORGE
COLEMAN and PERCY W.
EVANS, partners doing business
under the firm name of EVANS,
COLEMAN & EVANS,

Defendants in Error.

Brief for Defendants in Error

J. R. PRINGLE,
MCCUTCHEN, OLNEY & WILLARD,
Counsel for Defendants in Error.

Filed.....day of March, A. D. 1913.

.....,
Clerk.

By.....
Deputy Clerk.

FILED

Records of U.S. Circuit
Court of appeals
801

No. 2235.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

STANDARD PORTLAND CEMENT CORPORATION, a corporation,

Plaintiff in Error,

vs.

ERNEST E. EVANS, GEORGE COLEMAN and PERCY W. EVANS, partners doing business under the firm name of EVANS, COLEMAN & EVANS,

Defendants in Error.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT OF FACTS.

This action is upon four promissory notes aggregating thirty-nine thousand dollars, executed by the Plaintiff in Error, Standard Portland Cement Corporation, as maker and endorsed by W. J. Dingee and Irving A. Bachman. The notes are all alike, save as to amounts and payees, and are dated May first, 1908, and are pay-

able one year after date. The payees and the amounts of the notes are respectively:

Evans, Coleman & Evans	\$30,000.00
Charles D. Rand	5,000.00
T. R. Stockett	3,000.00
Thomas Graham	1,000.00

The notes were not paid at maturity and were subsequently endorsed to Evans, Coleman & Evans, with the exception of the note they already held. That firm then brought this action.

The complaint is verified, but the defendants Dingee and Bachman filed merely a general denial and were not represented at the trial. The Plaintiff in Error filed an answer specifically denying some of the allegations of the complaint and also setting up new matter by way of an affirmative defense. On the issues presented by this answer the cause was tried. There is practically no conflict in the testimony and the questions of fact involved are wholly as to the inferences to be drawn from the facts directly appearing in evidence.

It appears without conflict that the notes in question were executed in the name of the Plaintiff in Error, Standard Portland Cement Corporation, by its officers, who had been authorized to execute them by resolution of its board of directors. They were executed and delivered for the purpose of purchasing stocks and bonds of a corporation known as the Northwestern Portland Cement Company. Notes to the amount of ninety thousand dollars were executed for this purpose and the

Plaintiff in Error actually received in return the stocks and bonds for whose purchase the notes were issued. Among the notes so executed were those involved in this action.

The defenses to these notes urged by the Plaintiff in Error are three: first and foremost, fraud; second, want of consideration; third, want of authorization for the execution of the notes. This description of the defenses of the Plaintiff in Error is not exactly the language in which its counsel describe them, but we believe that an analysis of the pleadings and of counsel's brief will show that, nevertheless, the foregoing is a correct statement of the defenses urged. We might add in this connection that the defenses of want of consideration and want of authorization for the execution of the notes are in reality defenses incidental to the defense of fraud and form a part of that defense, and that the defense of fraud is the primary and important question of fact in this case.

We believe that none of these defenses are made out by the evidence—in fact that there is not even evidence sufficient to justify a finding that any of them exist, much less to overturn the finding of the lower court that they do not exist. But over and above this, upon the mere statement of the case there arises the question, how is it possible for any of these defenses to be maintained when it appears that the Plaintiff in Error has not returned, or offered to return, the consideration which it received for the notes? One would suppose that it was elementary that a corporation could not deny re-

sponsibility upon notes executed in its name when it fails to return anything of value which it has received for them. Accordingly, upon the merits of the case there are four matters to be considered: first, the defense of fraud; second, the defense of want of consideration; third, the defense of want of authorization for the execution of the notes; and fourth, the effect of the failure of the Plaintiff in Error to return, or to offer to return, the stocks and bonds which it received in consideration for the notes.

In addition to these questions which pertain to the merits of the action and were considered by the court below, there are two other matters, pertinent to this appeal alone, to which we desire to call the attention of this Court before discussing the merits. These matters are: first, that the Plaintiff in Error has failed to incorporate in its bill of exceptions the exceptions which it took to the report of the Referee before whom the action was tried; second, that all of the disputed issues are now foreclosed against the Plaintiff in Error by the judgment against it in the suit in equity hereafter mentioned, which the Plaintiff in Error brought against the Defendants in Error setting up the very defenses which this Court is now asked to review. Our argument, accordingly, will be divided into six main heads: first, the failure of the Plaintiff in Error to incorporate in its bill of exceptions the exceptions which it took to the report of the Referee who tried the cause in the court below; second, the exist-

ence of the judgment in the equity suit between the same parties by which every disputed issue is found adversely to the Plaintiff in Error; third, the defense of fraud; fourth, the defense of want of consideration; fifth, the defense of want of authorization for the execution of the notes; and sixth, the effect of the failure of the Plaintiff in Error to return, or to offer to return, the stocks and bonds which it received in consideration for the notes.

At this point we would say that the bill of exceptions assigns as error certain rulings at the trial admitting or rejecting evidence, and that these same rulings are likewise included in the assignments of error in the brief for Plaintiff in Error. But the brief for the Plaintiff in Error does not discuss or touch upon these rulings and they are not urged as grounds for reversal. The brief is concerned solely with endeavoring to show that the defenses of the Plaintiff in Error are made out from the evidence and that the findings to the contrary are not supported by the evidence. In view of the fact that these rulings upon the introduction of evidence are not urged, and the further fact that they are as to matters of little importance and their propriety is generally quite apparent, we do not discuss them in this brief but confine ourselves to the points stated above.

I.

THE FAILURE OF THE PLAINTIFF IN ERROR TO INCORPORATE IN ITS BILL OF EXCEPTIONS THE EXCEPTIONS WHICH IT TOOK TO THE REPORT OF THE REFEREE.

Pursuant to a stipulation between the parties (Tr., pp. 119, 121), the lower court ordered (Tr., pp. 121, 123) that the action be tried before the Hon. H. M. Wright, Master in Chancery, as Referee, the Referee to take and hear the evidence and to report the same to the Court with his findings of fact and conclusions of law, such report to be advisory only and to have the same effect as the report of a Master in a suit in equity, and to be subject to confirmation, modification, or rejection by the Court upon exceptions by any party in accordance with the equity practice.

The record shows that the cause was tried before the Referee in accordance with the foregoing stipulation and order and that the Referee made his report and findings of fact and conclusions of law in favor of the Defendants in Error and against the Plaintiff in Error.

The report and findings of the Referee are not set forth in the bill of exceptions, but appear in the transcript on pages 67 to 86 inclusive as part of the judgment-roll. According to the fifth subdivision of Rule 66 of the Rules of the Circuit Court, the report and findings of the Referee are a part of the judgment roll, and

are therefore a proper part of the record on this writ of error. We make no point that they are not.

But it is indisputable that unless the Plaintiff in Error presented to the court below by proper exceptions any objections which it had to the rulings of the Referee at the trial, or to his findings and conclusions, those objections were waived. The bill of exceptions (Tr., p. 980) shows that the Plaintiff in Error did present exceptions to the report of the Referee and to his findings and conclusions, and that these exceptions were overruled. But what the exceptions were which were so presented the bill of exceptions does not show or purport to show.

Now we take it as clear that the Plaintiff in Error cannot call upon this Court to review erroneous rulings and conclusions of the Referee as such. It can call upon this Court to review them only when they have been adopted by the court below and made the action of the court itself. The report of the Referee in this case was but advisory and not final. The final thing was the action of the court itself, and it is this alone that is subject to review here.

The action of the lower court in confirming the report of the Referee cannot be reviewed in this Court upon a record in which the bill of exceptions does not show upon what the lower court acted in confirming the report. This the present record does not do. So far as the bill of exceptions shows, it may well be that the Plaintiff in Error did not, by exceptions to the Referee's report, present any of the objections which it now urges

as a ground for review and reversal. So far as the bill of exceptions shows the exceptions presented to the trial court may have been entirely different from those presented to this Court, and the objections which it now urges may be urged for the first time in this Court.

The printed transcript does contain the exceptions urged in the court below to the Referee's report. (Tr., pp. 87 to 110.) They consisted of the objections to the Referee's report made to the Referee in advance of its filing. These objections, it was subsequently stipulated, should stand as exceptions filed before the Court; but the objections and the stipulation which made them exceptions before the Court are not part of the bill of exceptions. They are part of the printed transcript only because the clerk of the court below took it upon himself to include them as part of the judgment-roll. They are not in reality part of the judgment-roll. Rule 66 of the Circuit Court prescribes what the judgment-roll shall contain, and it does not call for exceptions to a referee's report any more than it calls for the inclusion of any objection or action by a party at a trial preliminary to the final judgment. The rule reads:

"Immediately after entering the judgment in an action at law the clerk shall attach together and file in the cause the following papers, which shall constitute the judgment-roll, viz.:

.

"Fifth. In case the complaint or any amended complaint has been answered by any defendant, the pleadings and all amended pleadings and amendments to

pleadings, and copies of all orders in relation to the amendment of pleadings or of amended pleadings, copies of all orders sustaining or overruling demurrers, copies of all orders in relation to a change, addition, substitution or elimination of parties, copies of all orders striking out pleadings or a part or parts thereof, all notices of election to have any demurrer to a previous pleading stand as the demurrer to a subsequent pleading, the verdict of the jury, if there be a verdict, or the written finding of the Judge, Referee, Commissioner or Master, if there be such, the agreed statement of facts, if there be such, and a copy of the judgment."

It follows that the exceptions to the Referee's report, not being contained in the bill of exceptions, and not being a proper part of the judgment-roll, are not a part of the record before the Court, although they may be printed in the transcript. The cause must be considered as if they did not appear at all.

Lessee of Pomeroy v. Bank, 1 Wall. 592; 17 L. Ed. 640;

Metropolitan etc. Co. v. MacFarland, 195 U. S. 322; 49 L. Ed. 219.

The exceptions taken to the Referee's report not being before the Court, it follows that the Court cannot review the action of the lower court in acting upon those exceptions and confirming the report. So far as the record shows, every objection now urged to the proceedings before the Referee and to the conclusions reached by him may have been waived by the failure

of the Plaintiff in Error to present such objections to the court below.

Baltimore etc. Co. v. Trustees, 1 Otto 127; 23 L. Ed. 260;

Metropolitan etc. Co. v. MacFarland, 195 U. S. 322; 49 L. Ed. 219;

Gilbank v. Stephenson, 30 Wis. 156;

Reever v. White, 8 Utah 188; 30 Pac. 685;

Turley v. Barnes, 131 Mo. 548; 33 S. W. 172.

II.

THE EXISTENCE OF THE JUDGMENT IN THE EQUITY SUIT BETWEEN THE SAME PARTIES, BY WHICH EVERY DISPUTED ISSUE IS DETERMINED ADVERSELY TO THE PLAINTIFF IN ERROR.

The answer of the Plaintiff in Error is, as we have said, divided into two parts. The first part (Tr., pp. 21-39) contains simply denials of certain allegations of the complaint. The second part (Tr., pp. 39-63) is concerned with allegations of new matter. The issues raised by the denials in the first part of the answer were not contested by the Plaintiff in Error and are all covered by the stipulations appearing on pages 916 and 917 of the transcript, save the denial for want of information or belief of the indorsement of Dingee and Bachman. The secretary of the Plaintiff in Error, however, himself testified to such indorsement (Tr., pp. 738-740) and it was never questioned. Accordingly, we

say there is no contested issue raised by the first part of the defendant's answer.

All of the contested issues are raised by the matters alleged in the second part of the answer, that is, the allegations setting up the defense of fraud and, as an incident of the fraud, want of consideration extending to the Plaintiff in Error, and want of authority on the part of its officers to execute its notes.

Subsequent to the filing of the answer, counsel for the Plaintiff in Error were taken with the idea (whether rightly or wrongly is immaterial now) that the defense or defenses presented by the second portion of their answer were equitable in nature and not available in an action at law. (See pp. 1 and 2 of brief for Plaintiff in Error, and pp. 71 and 72 of the transcript.) Acting upon this view the Plaintiff in Error filed its bill against the Defendant in Error on the equity side of the court, setting up the same matters as those set up in the second portion of the answer in the law action, and praying that the prosecution of the action at law be enjoined and that the notes be delivered up and cancelled. (Tr., p. 117.) The Defendant in Error answered the bill and, as stated in the bill of exceptions (Tr., p. 118), the issues so raised are the same as those presented by the second portion of the answer in the action at law. It was then stipulated by the parties that both the law action and the equity suit should be referred to Mr. Wright for trial and that they should be tried together at one and the same time. (Tr., pp. 119,

120.) An order of reference was made in accordance with this stipulation and both causes were so tried. When Mr. Wright came to make his report and findings in the law action, he found upon the issues presented by the first portion of the answer, but not upon those presented by the second portion, saying, (Tr., p. 80) :

“I intentionally omit to find on other issues presented by the answer herein, for the reason that they present defenses of fraud and other matters of purely equitable cognizance which were not properly pleadable in an answer at law, and which this court has not the power to consider on its law side. The same issues have, however, been presented by the bill in equity filed in said court entitled *Standard Portland Cement Corporation v. Ernest E. Evans, George Coleman and Percy W. Evans*, partners doing business under the firm name of Evans, Coleman & Evans, number 15,249, on the equity side of said court, a case tried at the same time with this action, and the said issues have been by my findings in said cause determined adversely to the complainants therein, being the defendants herein.”

The bill of exceptions also shows that the Master made his findings adversely to the Plaintiff in Error upon all the issues presented in the equity suit and reported as his conclusions of law that the Plaintiff in Error was not entitled to relief in the suit, that is, that the defenses to the notes urged in the equity suit (and they are all of the defenses urged by the Plaintiff in Error), did not in fact exist. (Tr., pp. 979, 980.)

The bill of exceptions also shows that judgment was entered in the equity suit upon this report against the

Plaintiff in Error, adjudging that it was not entitled to relief by reason of its bill or any of the matters alleged in it. (Tr., p. 982.)

Now these very matters that were alleged in the bill in equity include, as we have said, all of the matters in dispute between the parties. The present situation is, therefore, that it affirmatively appears from the record (a) that all of the issues in dispute between the parties are presented by the second portion of the answer of the Plaintiff in Error, (b) that subsequent to filing that answer the Plaintiff in Error chose to treat those issues as not cognizable in a law action and to present them on the equity side of the court, (c) that after trial, judgment was rendered against the Plaintiff in Error on the equity side and judgment on the law side followed as of course, and (d) that the Plaintiff in Error, instead of appealing from the judgment on the equity side, which adjudicated all the matters in dispute, obtained a writ of error to review the judgment in the law action from which all matters in dispute had been eliminated and in which the findings of the Referee, confirmed and adopted by the court, expressly fail to find as to such matters because they have been eliminated.

It is apparent that under these circumstances there can be no review by this Court of the matters in dispute between the parties. Those matters are not before the Court and the Plaintiff in Error is absolutely foreclosed as to them by a final judgment against it in another pro-

ceeding. The fact is that the Plaintiff in Error has sought to review the wrong judgment.

The point may be made clearer, if this be possible, by assuming that this Court does reverse the judgment in the law action and direct a new trial. What will be the result? At the trial so directed every disputable issue will have been foreclosed to the Plaintiff in Error by the judgment against it in the equity suit. The trial will consist in substance solely in introducing the judgment-roll in that suit. It is apparent that under these circumstances any reversal of the judgment under review will be futile. The very matters which it is sought to review are already settled by an adjudication between the parties, so that there can be but one result, reversal or no reversal, viz.: a judgment upon the notes in favor of the Defendants in Error and against the Plaintiff in Error.

We are so certain of the correctness of our position upon this point that it is with some hesitation that we burden the Court with a discussion of the evidence bearing upon the defenses set up by the Plaintiff in Error. We are unwilling, however, to allow the charge of fraud to go unanswered. An examination of the evidence will show, we believe, not merely that there is evidence sufficient to sustain the findings of the Master that there was no fraud, but that there is no evidence to support the charge, and that the charge is made without warrant or justification. We accordingly proceed to a discussion of the charge of fraud and the other matters incidental to it.

III.

DEFENSE OF FRAUD.

Counsel for the Plaintiff in Error devote much space in their brief and cite many authorities to show that fraud is nothing new in this world; that it assumes as many and as varied shapes as are capable of conception by the human mind; that it does not stalk forth openly in the bright light of day, but proceeds in secrecy and cloaks itself with forms and semblances, and that frequently, if not usually, it cannot be proven by direct evidence as to what was in the parties' minds, but only by the inferences which follow from all the facts and circumstances leading up to and surrounding and constituting the transaction under examination. Counsel need not have fought so stoutly for these supposed contentions. They are not contentions at all. We concede them. We always have conceded them. They are elementary. It is because of them that in this case there was permitted without objection, the widest and most searching examination by the Standard Corporation's counsel into everything and anything that might by any possibility throw light upon the subject. The relations between the persons involved, their private and confidential correspondence, the histories of the various companies, were all spread out before the court at the greatest length, although ninety-nine per cent of the evidence was wholly inconsequential. But if there was anything to be found anywhere in it that would indicate any

wrongful act or intent either on the part of the payees of the notes or on the part of those who represented them, the Plaintiff in Error was entitled to have it brought to light.

On the other hand, if after all this close and extended examination nothing inconsistent with good faith on the part of the payees and their agent Howard is discovered and the claim of fraud is found to be based only on strained and fanciful inferences, drawn from facts innocent and commonplace when viewed naturally, the conclusion becomes overwhelming that there was no fraud. That is exactly the situation here. The cry of fraud is chiefly directed at Howard. If there was any fraud on the side of the payees of the notes, Howard was a party to it. He was subjected to a most lengthy and searching examination. It was not an examination where counsel were groping blindly, or where the testimony of the witness could not be checked if untrue. Counsel had as a guide and as a means of checking any statement of the witness a mass of contemporaneous correspondence covering nearly every phase of the case. This correspondence was confidential in character and very evidently written without any idea of its ever being disclosed or used. Its truthfulness is stamped all over it. Yet under these circumstances, the testimony of Howard and the correspondence are consistent in themselves and with each other and both are plain and straightforward. Howard's testimony and the correspondence are likewise consistent with and supported by the testimony of

the other principal actors in the drama, Mr. Smith and Mr. Evans, one a lawyer, and the other a business man, both men of repute and position. The testimony of these three and the statements in the correspondence are not contradicted by any testimony on the part of the Plaintiff in Error. Its principal witness was Mr. Young, its secretary, but an examination of his testimony will not disclose any conflict with that of the three gentlemen named. What, then, is the tale that the record unfolds? It is substantially this:

In 1902 the Standard Portland Cement Company, a company distinct from the Plaintiff in Error, the Standard Portland Cement Corporation subsequently organized, was formed to engage in the manufacture of Portland cement at Napa Junction in this State. It was managed and controlled by the defendants Dingee and Bachman, of whom, it is evident enough, Dingee was the dominating personality. (Tr., pp. 264, 269, 270, 271, 135, 330, 693-696.)

In 1903 the Western Fuel Company, of which Mr. Howard was and is the president and managing officer, and which was engaged, among other things, in the business of marketing building materials, handled some of the output of the Standard Company as sales agent. Its agency in this year was not exclusive, but it became so in the following year, 1904. (Tr., p. 230.)

The contract covering the agency at this time does not seem to be in evidence, but this fact is immaterial, as the contract was superseded by another, which is in evidence.

The Standard Company was a great success (Tr. pp. 128), and its success induced Dingee and Bachman to organize and promote the Santa Cruz Portland Cement Company, for the purpose of manufacturing cement at a point near Santa Cruz. On March first, 1906, in anticipation of the early completion of the Santa Cruz plant, a contract was made between that company and Western Fuel Company, whereby the latter was made sales agent for the former. In consideration of the Western Fuel Company getting this agency it was agreed that its commission on sales for both cement companies should be ten cents a barrel instead of fifteen cents as provided by the then existing contract with the Standard Company. Accordingly, at the same time with the making of the contract with the Santa Cruz Company, a new contract was made with the Standard providing for this change in the rate of commission. (Tr., pp. 230, 263.) These two contracts appear on pages 249-252 and 259-262 of the transcript. They provide for an exclusive agency and a commission to the agent of ten cents per barrel. On the other hand, the agent itself is to pay each month for all deliveries during the preceding month, regardless of whether it has collected from the purchaser, or ever does collect. The effect of the contracts was to give the cement companies an active and aggressive selling agency, already established in business, and also to assure them of regular and sure payments for all sales, a feature of great importance to any manufacturing company whose pay

rolls and other operating expenses call for large amounts which must be met regularly and with the utmost promptness. The contracts further reserved to the manufacturing company the vital right of fixing the sale price, a right which gave them practical control of the situation as between themselves and the agent. These contracts continued in existence until the fall of 1908, some time after the making of the notes in suit.

In 1906 the Western Building Material Company was organized, for the purpose of taking over the portion of the business of the Western Fuel Company that was concerned with the handling of building material. Mr. Howard was and is its president. All of its stock was and is owned by the Western Fuel Company, and it is nothing more than an instrumentality of that company for the handling of one branch of its business. (Tr., p. 230.)

In furtherance of the purpose for which the Western Building Material Company was formed, the agency contracts with the cement companies were assigned to it by the Western Fuel Company on June 30, 1906, and it became the sales agent for those companies. (Tr., pp. 244, 253, 254.)

It may be well to make mention at this point of an understanding which the cement companies insisted upon as a condition to the execution of the sales contracts of March 1, 1906. This condition was that the cement companies should have the right to terminate

the agency if at any time Mr. Howard should cease to be the chief executive officer of the agency company. Counsel for defendant have laid some stress on this condition as indicating something sinister, and we mention it for that reason alone, for it has no other bearing. The explanation of how this condition came to be required by the cement companies is found on pages 562-564 of the transcript. It is simply that the officers of the cement companies had personal objections to the officer of the agency company next in rank to Mr. Howard.

The Standard Company was, as we have said, a great success. Mr. Howard, who made frequent visits to the northwest in connection with his coal business, suggested to Dingee and Bachman from time to time that there was a field on Puget Sound as yet unoccupied for another enterprise of the same sort and that this enterprise would not only be profitable in itself, but would also be advantageous to the California enterprises, since if Dingee and Bachman did not occupy the field others would certainly do so, and if they did they were also quite certain to invade the California markets with their product. (Tr., p. 272.)

Pursuant to these suggestions, Dingee and Bachman, in 1906, told Howard that if he could find in the neighborhood of the Sound suitable deposits of raw material they were favorably disposed to the putting up of a cement plant. It was also understood between them that if this were done Howard's company should have

the selling agency for the new concern and he himself should have some share in the promotion profits. (Tr., pp. 132, 133.)

Howard did various things toward finding suitable deposits about the Sound, and among other things he enlisted the assistance of Mr. Ernest E. Evans, of the merchant firm of Evans, Coleman & Evans, of Vancouver, who were the Vancouver agents for the Western Fuel Company, and are the Defendants in Error here. Mr. Evans, in June, 1906, introduced to Mr. Howard a man named Ridley, who claimed to have found some valuable lime deposits near Kendall on the line of the Bellingham Bay and British Columbia R. R. in the State of Washington, and Howard, Evans and Ridley went to look at the deposit. (Tr., pp. 131, 273.)

On returning to Vancouver Howard wired Dingee that he had found a lime deposit and for Bachman, who was the technical man of the two, to come up and see it. Bachman did so and at once authorized Howard to take up the option on the Ridley lands and also to secure other adjoining lands. (Tr., pp. 131, 273, 331.) Mr. Howard proceeded with the securing of these lands, and considerable of his testimony and correspondence was concerned with his difficulties in so doing. In addition to looking over the securing of the lands, Mr. Howard, because of his frequent visits to the northwest, at first looked after anything else there that required attention, such as the matters of freight rates, power, fuel, water supply, etc. These activities of his

ended in the spring of 1907, when Dingee and Bachman sent Mr. Davis to Kendall to superintend the erection of the plant. (Tr., p. 153.) After that time Mr. Howard did practically nothing in the affairs of the Kendall project. (Tr., p. 275.)

For the purpose of carrying on the enterprise at Kendall, Dingee and Bachman formed the Northwestern Portland Cement Company. (Tr., p. 759.) This was done toward the end of August, 1906. (Tr., pp. 639-642.) Mr. Dingee and Mr. Bachman immediately proceeded with the steps necessary to authorize the issuance of bonds of the Northwestern Company. These steps were completed and about January, 1907, the company began to issue bonds. They were avowedly issued for the purpose of raising money with which to construct the company's plant. (Tr., pp. 143, 155, 156, 157, 192.) With each bond sold by the company there went to the purchaser an equivalent amount in par value of its stock. This was commonly called bonus stock as if it were a gratuity, although legally of course it was a part of the sale just as much as the bonds.

Among the purchasers of the bonds in the new company were a number of friends of Mr. Howard, including Mr. Evans, who made their purchases through him. The Western Building Material Company also purchased nineteen bonds. Including the bonds of the Western Building Material Company there were purchased altogether through Mr. Howard one hundred bonds, of the par value of one hundred thousand dol-

lars. The purchasers of these bonds paid for them in cash at par. They also received, of course, their quota of the so-called bonus stock.

The stock of the Northwestern Company other than the bonus stock was retained by Dingee and Bachman as promoters' profits, and is usually referred to as promotion stock.

As we have said, Dingee had previously told Howard that, in consideration of his interesting himself in the enterprise, finding the deposits, etc., he should share in the promotion stock. At one time Bachman, in Dingee's absence, attempted to make an arrangement with Howard whereby the latter should share in the promotion stock equally with the others only in case he secured bond subscriptions to the amount of three hundred thousand dollars. Counsel for the Plaintiff in Error seem to attach some weight to this incident. We have never been able to see its bearing. In any case, the final result was that on the one hand Howard did not secure subscriptions for three hundred thousand dollars of bonds, and on the other hand Dingee and Bachman did issue to him an equal share of the promotion stock, namely, some nine thousand shares. (Tr., pp. 283-287.) This stock, of course, did not represent any actual investment, and its value was wholly prospective. Out of the amount he so received Mr. Howard gave to each one of those who had purchased bonds through him an amount equal in par value to the bonds purchased. Thus each purchaser through Mr. Howard

received through him and through the bonus stock an amount of stock equal in par value to twice the amount of the bonds he purchased. Mr. Howard made this contribution out of the promotion stock which came to him because it had originally been represented to those contemplating the purchase of bonds that the bonus stock would be issued on the basis of two for one instead of one for one as was finally done. (Tr., pp. 196, 305, 306.)

Mr. Howard also gave Mr. Evans a very considerable amount out of his promotion stock, in consideration of Mr. Evans' services in connection with the enterprise, and also prevailed on Mr. Dingee to make some contribution to Mr. Evans. (Tr., pp. 196, 197, 305, 306, 520.)

The foregoing covers the activities of Mr. Howard in connection with the Northwestern Company. For an exact appreciation of his relations to that company and to the other individuals interested in it, it is necessary to consider the things he did not do as well as those he did do. Mr. Howard had nothing whatever to do with the organization of the company (Tr., pp. 281, 282, 302), the making of its bond issue (Tr., pp. 281, 282, 302), its financial policy or its general management. (Tr., pp. 312, 557, 558, 565.) He was not one of those in control. He was not a stockholder until his promotion stock was given him. (Tr., pp. 329, 556.) He was never a director or officer. (Tr., pp. 333, 565, 672.) He never attended any meeting either of its di-

rectors or its stockholders. (Tr., pp. 302, 333.) His activities were confined to suggesting to Dingee and Bachman the establishment of a plant on Puget Sound, to finding a deposit of the raw material there, to attending to securing title to the lands, to looking after details on his visits to the Sound during 1906 and the early part of 1907, and to arranging for the purchase by various parties of one hundred bonds. This was all. In the real management, direction and control of the company he was not a factor. Dingee and Bachman were the responsible heads of the Northwestern, as they were of the other cement companies. It is very evident from the correspondence that it was they who directed the company and exercised final authority concerning it. Whatever Howard did he did under authority from them. Whatever information he had as to the intentions and plans of the company he received from them. As evidencing this, see the letters appearing on the following pages of the transcript, viz.: 383, 398, 405, 408, 411, 414, 415, 418, 445, 448, 459, 464, 466, 488, 491, 500, 509, 512, 516, 523; see, also, Tr., pp. 281, 302, 331.

This statement of the negative side of Mr. Howard's relations to the Northwestern Company is confirmed by his ignorance of the affairs of that company from time to time. Until informed by Mr. Evans he was ignorant of the failure of the company to pay its laborers in January, 1908. (Tr., pp. 181, 313, 535.) Until informed by the Wenzelburger report he was ignorant as to the financial condition of the company and the di-

version of its funds to the use of Dingee's California companies. (Tr., pp. 565, 566.) It was not until after Dingee's collapse in November, 1908, when he saw a statement of the Santa Cruz Company, that he became aware that the Bellingham Bay and B. C. stock owned by the Northwestern Company had been pledged to secure an indebtedness of the Santa Cruz Company. (Tr., pp. 566, 310-312.)

While we are discussing Mr. Howard's relations to the Northwestern Company it may be well to speak of his relations to the other two cement companies. His only substantial relation to those companies, or in fact to Dingee, was through the sale contracts mentioned. He was never an officer of either company or identified with them.

To resume the chronological history. In February, 1907, after the Northwestern Company was launched, the Plaintiff in Error, Standard Portland Cement *Corporation*, as distinguished from the Standard Portland Cement *Company*, was organized. It took over all the properties and liabilities of the Company and the latter became defunct. The object of the formation of the Corporation was not only to put into it the business of the Company, but, in time, to put into it the Santa Cruz and Kendall plants, thus consolidating the three Dingee-Bachman cement companies into one, which one was to be the Plaintiff in Error. Dingee and Bachman declared this to be their intention (Tr., pp. 221, 222, 281, 558), and the extremely broad powers set forth in the

corporation's Articles of Incorporation indicate the same thing. (Tr., pp. 666-671.) For instance, two sections of those articles are as follows:

"(7) To acquire by purchase, subscription or otherwise, and to hold, own, deal in, sell, assign, transfer, mortgage, pledge, and otherwise dispose of shares of the capital stock of, and any bonds or other evidences of indebtedness secured or unsecured, granted or issued by any other corporation, or corporations, of this or any other State, Territory, or country, and to exercise all rights and powers of ownership, including the right to vote thereon;"

"(10) To aid in any manner any corporation of which any of the bonds or other securities or evidences of indebtedness or stock are held by this corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or securities or evidences of indebtedness or stock;"

In the early part of 1907 the Northwestern Company purchased a considerable block of the stock of the Bellingham Bay and British Columbia Railroad. (Tr., pp. 317-324, 487.) Mr. Dingee, as executor or administrator of some estate (we believe the estate of Hayward), already held a block of the stock, and the purchase by the Northwestern Company gave him control. The railroad of the company ran from Bellingham Bay on the Sound to and through Kendall. The western half of the road paid and the eastern half did not. There were two objects in the Northwestern Company purchasing the stock and thereby securing a friendly control of the railroad. In the first place the establishment of a five thousand barrel cement plant at Kendall

would change the character of the east half of the railroad from a non-productive to a productive property, so as to make it an attractive buy to a larger road. It was desired that the Northwestern Company should get some portion of the increased value which would be so created. In the second place, and more important, the only outlet from Kendall to the cement markets was by this railroad. It was of the utmost importance that it have reasonable rates over the road and one way (and so far as yet discovered, the most effective way) to secure rates which would be reasonable, at least from the point of view of the cement company, was to purchase control of the railroad company. (Tr., pp. 318, 319, 873.) At the time of the Wenzelburger report, of which we will speak later, the Northwestern's books showed the railroad stock as having cost up to that time some \$91,000.

In the early part of 1907 (Tr., p. 579), the Northwestern Company commenced work at Kendall, sending there Mr. Davis, with workmen and tools, for the purpose of clearing the ground and getting everything ready for the installation of machinery. The work progressed slowly and never got beyond the preparatory stage of constructing a track from the railroad to the mill site, clearing the land, erecting buildings for the accommodation of the workmen, etc. (Tr., pp. 135, 136, 586.) Both Evans and Howard became much dissatisfied with the slowness of the work. Evans would complain to Howard and Howard would complain to Dingee. (Tr., pp. 154, 155, 156, 158, 159, 316, 317,

506, 513, 515, 524, 525, 559, 807, 870, 872.) When the panic of 1907 came in November of that year, the workmen at Kendall were laid off. It was given out that the cessation of activities was merely temporary until the violence of the panic had passed, and Mr. Davis, the Superintendent, remained on the ground, and none of the supplies, equipment, tools, etc., were removed. But the dissatisfaction of Howard and Evans kept growing, and in December, 1907, it came to a head when it became evident that, although the Northwestern was the first cement company to be projected on the Sound, two other companies would have their plants in operation in that field before it. On December 11, 1907, (Tr., p. 527), Evans writes Howard that it looks to him as if Dingee had missed his opportunity and that he, Evans, wishes his money were not in the scheme and inquires if there is any objection to his writing the secretary for information about the company. Howard replies on December 16th (page 529 of Transcript) that he agrees with Evans and that Dingee and Bachman have missed the golden opportunity at Kendall and suggests that, instead of writing to the secretary of the company for information, Mr. Evans write Dingee himself. Howard also says that what he wants to lead up to is the repurchase of all the bonds that went through his hands so as to get his friends out. Evans answers on December 20, 1907 (page 530 of Transcript), that he is writing Dingee as Howard suggests, that he feels very sore, and that if they could get their money back

it would be the best thing. Howard answers December 26, 1907 (page 531 of Transcript), saying *inter alia* that he has learned that negotiations are under way for the sale of the Bellingham Bay and British Columbia Railroad and that in case the sale went through he would urge the repurchase of the Northwestern bonds with the proceeds so obtained.

Evans wrote Mr. Dingee, as he stated to Howard he would do, and received no reply, and on January 6, 1908, he wrote Mr. Dingee again. (Tr., pp. 159-162, 532.) To this inquiry likewise Mr. Dingee made no reply.

On the same day that Evans made his second inquiry of Dingee he learned that the Northwestern Company had not paid its laborers in Kendall for two months and that they were in serious want and threatening to file liens, etc. He immediately wires Mr. Howard and is advised by the latter's office that Howard is on his way north, but that a copy of his wire has been sent to Mr. Dingee, who has promised settlement by the fifteenth of the month. This Evans writes to Howard at Nanaimo. (Tr., pp. 163, 165, 533.) Howard replies from Nanaimo (Tr., p. 534) that he did not know that things had come to such a pass at Kendall, that it was wrong, and that there was not the investment at Kendall to represent the amount Dingee had received by the sale of bonds, and that means would be taken to ascertain what he had received and what disposition had been made of it.

On January 30, 1908, Howard has returned to San Francisco and he wires Evans to know if he has heard from Dingee. Evans replies that he has not. (Tr., p. 537.) Howard thereupon writes Dingee requesting him to give Evans the information the latter has asked (Tr., p. 540), and also writes Evans sending him a copy of his letter to Dingee, and requesting Evans, in case he does not hear from Dingee, to send him some Northwestern shares for the purpose of having them transferred into the name of some accountant to enable him to make an examination of the company's books. (Tr., p. 538.) Howard had previously in talk with Evans in the north advised him to do this if he got no satisfaction from Dingee. (Tr., pp. 178, 202, 203.)

Evans promptly sent the shares to Howard and they were transferred to the name of Wenzelburger, a public accountant, who made the desired examination. The results of the examination were set forth in a written report, which was put in Mr. Howard's hands at the end of February, 1908, and which was immediately transmitted to Mr. Evans. (Tr., pp. 181, 187, 549.)

This report disclosed to Howard and Evans for the first time something of the true inwardness of the Northwestern Company's financial management. (Tr., pp. 192, 549, 565.) A copy of the report is attached to the end of Mr. Evans' deposition. It showed that in all 295 bonds had been sold; of these, however, eleven had not been paid for. They were in fact never paid for and were never delivered, leaving as the actual num-

ber of bonds sold 284. On these was realized \$284,000. This constituted all the cash received by the Company, and the report showed that of it \$9,486.07 had been diverted to Dingee personally, \$7,150 had been diverted to the Plaintiff in Error, the Standard Corporation, and \$105,168.33 had been diverted to the Plaintiff in Error's sister corporation, the Santa Cruz Company. The balance of the money had apparently been expended legitimately. In other words, it became apparent that Dingee, or Dingee and Bachman, had taken the funds of the Northwestern to help out their two California enterprises to the extent of something over one hundred and ten thousand dollars.

It was the sort of report that would naturally stir an investigating bondholder to action. It did so. Howard, when he sent the report to Evans, was leaving for New York and Washington, D. C., to endeavor to secure a contract for the sale of cement to the Panama Commission. Evans, on March 4, 1908, writes to him at New York (Tr., p. 549), that he has received Wenzelburger's report and that his suspicions are more than confirmed that Dingee and Bachman have been using the money for their personal ends, that according to the laws of British Columbia they are criminally liable, and if they were in British Columbia would be compelled to make good within forty-eight hours or be arrested. Mr. Evans also states that he will go to California about the middle of the month and will await Mr. Howard's return from the East.

This letter was apparently sent by Mr. Howard from New York to Dingee. There is no written evidence of this and Mr. Howard has no recollection of it (Tr., p. 962), but Mr. Young's testimony is quite positive that he saw such a letter from Evans in Dingee's hands. (Tr., p. 722.) Much has been said about the threats of criminal prosecution made against Dingee and about they being an inducement for him to enter into a fraudulent conspiracy to relieve himself of the people making the threats. The letter just mentioned is worthy of note as it is absolutely the sole and single instance of any mention to Dingee of criminal responsibility on his part.

Mr. Evans was delayed in coming to San Francisco by the illness of his brother, but finally came toward the end of March. (Tr., p. 203.) Mr. Howard had returned and immediately on Evans' arrival the purchase of the Northwestern bonds by the Standard Corporation was arranged. There are three witnesses, Evans, Howard and Smith, who testify to the various interviews and acts which resulted in the arrangement. The testimony of Mr. Evans is on pages 187 to 195 and 203 to 210 of the Transcript. Mr. Howard's account appears on pages 575, 576, 962-966 of the Transcript; Mr. Smith's account appears on pages 967-976 of the Transcript. Those three accounts are all to the same effect. The differences between them are unimportant and such as one would expect to find after the years which have elapsed.

The interviews and acts which resulted in the arrangement for the purchase of the Northwestern bonds and the issuance of the notes of the Plaintiff in Error are, of course, the crux of the latter's case. If there was fraud, it must have been here. We propose to set forth these interviews and acts in some detail, and we submit that everything that was said and done by Howard and the bondholders is not only consistent with good faith on their part, but was the natural thing for them to do, the very thing that any one of us, court and counsel included, would ourselves have done under the same circumstances, without the slightest idea that we were doing anything wrong. What took place was substantially this:

When Mr. Evans reached San Francisco he called on Mr. Howard early in the morning, and found him busy. He then called on Mr. Smith, both because he was an attorney and because he was a bondholder of the Northwestern like himself. Smith and Evans talked the matter over and arranged to get hold of Mr. George C. Spencer, another bondholder, and the three then called on Mr. Howard. The matter was discussed and Howard, as the man through whom the bonds had been bought and who knew Dingee best, was asked to see him and find out what he proposed doing about going on with work at Kendall or taking up the bonds.

Howard went to see Dingee the same day (March 26, 1908), and Dingee told him that they intended going on with the work, but that it was advisable, in view of

the financial situation, not to press construction then, that if Mr. Howard's friends were uneasy he would arrange to buy their bonds, that he could not pay for them himself, but he could arrange for either the Standard or the Santa Cruz to buy them, paying for them with notes. Howard's interview with Dingee was short and Dingee's answer was given promptly upon Howard's stating the purpose of his call. Howard reported back to Evans, Smith and Spencer, and then wrote Dingee the following letter: (Tr., p. 879.)

"March 27, 1908.

"W. J. DINGEE, ESQ.,
San Francisco, Cal.

"*Dear Mr. Dingee:*

"Referring to our interview of yesterday A. M., I have seen several of the Northwestern Cement Co. bondholders.

"Told them that upon the surrender of their bonds with the 100% bonus stock you were willing to give them one year notes of Santa Cruz Portland Cement Co. or Standard Portland Cement Corporation, bearing interest at 6% payable semi-annually, as is the case with the bonds they held.

"They then asked—

"1. Have either of these two companies the right under their articles of incorporation to purchase and to hold the stock and bonds of other corporations?

"I told them I felt sure that your articles were drawn with broad enough powers to enable them to do this, but that you could satisfy them on this point.

"2. Would you furnish copy of the resolution of the board authorizing the purchase of the bonds?

"I said that I thought there would be no objection to that.

“3. Would you endorse the notes of the company that you purchased?”

“I said that I had not raised that point and only you could answer.

“My belief is that they would prefer the Standard Company’s notes.

Yours truly,

“JLH/G

President.”

No reply apparently was made to this letter, but Howard saw Dingee again and, in accordance with the decision of Evans, Smith and Spencer, told him that the bondholders would take the notes of the Standard, it being also understood that Dingee would endorse the notes and that the purchase would be authorized by resolution of the Standard’s board of directors. The bondholders were also furnished with a copy of the Standard’s articles of incorporation, for the purpose of seeing whether it had power to purchase the bonds and stocks of another corporation. It was found that such purchase was expressly permitted.

The matter being arranged, Evans requested Howard to write him a letter setting out the arrangement, so that he could send it on to Mr. Rand and the two Warner brothers, who had taken some of the bonds originally purchased by Evans, Coleman & Evans. Accordingly Howard, on the next day, wrote Evans as follows: (Tr., p. 165.)

“After conference with some of the subscribers of bonds of the Northwestern Portland Cement Company, I have arranged that the Standard Cement Corporation will take up the bonds that were subscribed for through

the writer, and that corporation will issue in payment its notes for the face value of the bonds, payable on or before one year with interest at six per cent payable semi-annually.

"Will you, therefore, please send me your bonds and all the shares, and I will give you receipt therefor, until I deliver you the note as stated.

"The Standard Portland Cement Corporation has authority by its articles of incorporation to buy and own securities in other corporations.

"Its board of directors will authorize this step, and I shall be furnished with a certified copy of authority to purchase. Mr. W. J. Dingee will endorse these notes."

Howard also wrote the same letter to other bondholders of the Northwestern who had purchased their holdings through him. (Tr., p. 880.)

The next thing is a letter from Mr. Howard to a Mr. Stockett at Nanaimo, who had likewise purchased bonds through Howard, informing Stockett of the arrangement for the purchase of the bonds and requesting him to send his bonds down.

On April 9, 1908, Howard writes Dingee as follows: (Tr., pp. 882, 883.)

"April 9, 1908.

"W. J. DINGEE, ESQ.,
Crocker Building,
City.

"*Dear Sir:*

"Referring to our recent conversation about the Northwestern bonds, I enclose forms of resolution and note. Please tell me if the form of note is acceptable, and if the resolution is O. K. will you kindly have it passed and send me certified copy.

"I will then prepare note to accompany each batch of securities. Yours truly,"

The forms of resolution and note which accompanied this letter were made in Mr. Howard's office from pencil drafts prepared by Mr. Sidney V. Smith, and read as follows: (Tr., pp. 909, 910.)

"SAN FRANCISCO,, 1908.

"For value received the Standard Portland Cement Corporation promises to pay to the order of
 on or before one year from May first, 1908, the sum of
 Dollars, with interest thereon from said day until paid at the rate of six per cent per annum payable semi-annually, and if not so paid to be compounded.

"STANDARD PORTLAND CEMENT CORPORATION.

By Pres't.
 Secty.

(over)

"For value received, I hereby waive presentment, demand, protest and notice of nonpayment of within note."

"*Resolved:* That the President be, and he is hereby authorized and directed to buy bonds of the Northwestern Portland Cement Company and the shares of the stock of said Company which have been issued to the holders of said bonds in the proportion of one share of such stock for every One Hundred Dollars of the amount of such bonds, and in payment therefor to give to each person from whom such bonds and shares shall be bought, the note of this Company executed by the President and Secretary under the corporate seal, payable on or before one year from May 1st, 1908, for the amount of such bonds so purchased, bearing interest at the rate of six per cent per annum from said date until

paid, payable semi-annually, and to be compounded if not so paid."

To the letter of April 9, 1908, Mr. Dingee replied the next day as follows: (Tr., p. 726.)

"JOHN L. HOWARD, ESQ.,
City.

"*Dear Mr. Howard:*

"Your favor of the 9th inst., enclosing form of note to be given in the matter of the purchase of the Standard Portland Cement Corp. of bonds and stock of the Northwestern Portland Cement Co., also copy of resolution is received. The form of note is, of course, satisfactory, but as to the resolution, would it not be better to have resolution with each purchase, and if not, to limit the resolution to the purchase of so many?

"Mr. Young, the Secretary, has gone to Placerville, but will be here Monday, when we can take up the matter and close it up the first of the week.

Yours truly,

WILLIAM J. DINGEE."

This is the last communication between Howard and Dingee concerning the matter. Thereafter it was left to the secretaries of the Western Fuel Company and the Standard to attend to the details of the consummation of the transaction.

Now if the theory of the defendant is correct and the proposed purchase by the Standard was really a sham clothed by resolutions and formalities in the garb of a genuine and honest transaction, the resolutions and formalities discussed in these last two letters are the ones that were arranged to accomplish the fraudulent purpose; but we say that these letters—natural, informal

and unstudied as they are,—are in themselves evidence that such is not the case. Men in conspiring do not write such letters. In fact they do not write letters at all where they are in easy personal reach of each other, as in this case.

The secretaries of the two companies completed the transaction as planned. Mr. Norcross, secretary of the Western Fuel Company, gathered together all but ten of the bonds sold through Mr. Howard, together with the accompanying stock, and on May 4, 1908, he wrote the Plaintiff in Error as follows: (Tr., pp. 730-733.)

“May 4, 1908.

“STANDARD PORTLAND CEMENT CORPORATION,
Crocker Building, City.

“*Dear Sirs:* Northwestern Portland Cement Company. In accordance with understanding between Mr. Dingee and Mr. Howard, I have prepared notes as listed below for execution by the Standard Portland Cement Corporation. These notes are to be endorsed by Mr. Dingee, and he is to waive notice of protest.

“Following are the notes dated May 1st, 1908, payable on or before one year from date with interest at six per cent per annum:

(In ink) Charles D. Rand	\$ 5,000.
Evans, Coleman & Evans	30,000.
Sidney V. Smith	25,000.
Western Building Material Co.	19,000.
Catherine E. Spencer	3,000.
T. R. Stockett, Trustee	3,000.
Thomas Graham	1,000.
A. S. Hamilton	1,000.

\$87,000.

(In pencil) D. M. McKay 3,000. 90,000.

"Please have these notes ready for delivery to me on Tuesday the 5th inst., when I will deliver you eighty-seven bonds of the Northwestern Portland Cement Company, numbered as follows:

Numbers 1, 2 & 3	3
" 213 to 217 inc.	5
" 7 to 50 inc.	44
" 123 to 157 inc.	35
	<hr/>
	87
(in pencil) 4 5 & 6	3
	<hr/>
	90

"I will also deliver you the following stock certificates which have been endorsed:

<i>Number.</i>	<i>In Name of.</i>	<i>No. of Shares.</i>
54	John L. Howard, Tr.	190
72	Sidney V. Smith	250
74 x 52 (52 in pencil)	Geo. W. Spencer	30
125 x 53 (53 in pencil)	T. R. Stockett, Tr.	30
126	Thomas Graham	10
127	Jeannie Hamilton	10
154	Charles D. Rand	10
155	" " "	10
156	" " "	10
157	" " "	10
158	" " "	10
160	Ernest E. Evans	30
179	" " "	50
180	Adam L. Russell	70
196	A. Wenzelburger	150
		<hr/>
	Total	870
		870
73	McKay	250 30 (In
		<hr/> pen-
		900 cil)
(in pencil)		30

"I will also deliver you certificate No. 188 in name of John L. Howard, Trustee. This I should like to have Mr. Dingee receipt for, as it is stock which he personally gave to Ernest E. Evans.

"I will also deliver you a deed for certain property which stands in the name of John L. Howard.

"For this Mr. Howard is to receive your note for Eighteen Hundred Dollars dated May 1st at six per cent, payable on or before one year.

"Will you please have a certified copy of the attached resolution made as arranged.

"The other thirteen bonds which make up the One Hundred Thousand Dollars subscribed through Mr. Howard are expected here in a few days, and will be presented as soon as received.

Yours truly,
D. C. NORCROSS."

Within the next day or so, pursuant to the foregoing letter, Mr. Norcross called at the office of the Plaintiff in Error on Mr. Young, its secretary, and delivered to him the stocks and bonds, and received in return the Standard's notes. He also received the Standard's receipt for the stocks and bonds (Tr., pp. 745, 746), and a certified copy of the resolution of its board of directors authorizing the purchase of the bonds and the giving of the notes. (Tr., p. 734.) The certified copy of the resolution received by Mr. Norcross reads as follows: (Tr., pp. 736, 737.)

"THIS IS TO CERTIFY, that at a special meeting of the Board of Directors of the Standard Portland Cement Corporation, duly called and held on the 5th day of May, A. D. 1908, at which meeting a majority of said Board was present, the following resolution was unanimously adopted:

“Resolved, That the President or the Vice-President or either of the Vice-Presidents of this Corporation, be and he is hereby authorized and directed on behalf of this Corporation to buy One hundred (100) bonds of the Northwestern Portland Cement Company for One Hundred Thousand Dollars (\$100,000), together with the shares of stock of said Company, which shares have heretofore been issued to the holders of said bonds in the proportion of one (1) share of stock for each and every hundred dollars of the amount of said bonds. And he is further authorized to give the obligation or the obligations of this Corporation in payment therefor to each person, or persons, from whom such bonds and shares shall be bought, which obligations shall be executed by him under the name of this Corporation and attested by the Secretary under the corporate seal, and shall be made payable on or before one (1) year after May 1st, 1908, and shall bear interest at the rate of six per cent (6%) per annum, from said date until paid; interest to be made payable semi-annually, and to be compounded if not so paid. He is further authorized when such obligation or obligations shall become due, and if then unpaid, to renew the same from time to time until the amount due is paid in full.

“IN WITNESS WHEREOF, the Secretary of said Standard Portland Cement Corporation has hereunto set his hand officially and affixed the seal of said Corporation, this 5th day of May, A. D. 1908.

*(Signed) L. F. YOUNG,
Secretary, Standard Portland Cement
Corporation.”*

We should have also mentioned the fact that it was understood that Mr. Howard would return the promotion stock which he had received, and a few days after the delivery of the bonds and the stock accompanying them Mr. Norcross gathered up all of Mr. Howard's

promotion stock, which had been somewhat scattered, and delivered it to Mr. Dingee.

With the occurrence of the events last mentioned the transaction involved in this action was consummated. If any fraud has been perpetrated on the Standard, it had then been accomplished. Yet where in all of this long history is there the slightest reason for even a suspicion of Howard and the bondholders? Their course has been perfectly plain and perfectly natural. It may be summed up in a few words. The bondholders became dissatisfied at the progress of the Northwestern's works and, proceeding to investigate, learned of the diversion of its funds to the uses of the Standard and the Santa Cruz. Through Mr. Howard, through whom they had made their investment, they went to the man in control of all three companies—Mr. Dingee—and asked him what he was going to do about it. He replied that he would arrange for either the Standard or the Santa Cruz, as they preferred, to buy with its notes their Northwestern bonds and stocks and relieve them of their investment. They replied that they preferred the notes of the Standard, and the transaction was put through. This is essentially all there is to it. We repeat again that anybody under the same circumstances would do exactly what Howard and the bondholders did, and would do it without any idea, no matter how scrupulous he might be, that he was doing anything wrong or in the slightest out of the way.

What, then, is it that is claimed to be wrong about

the matter? We think that all of the arguments and claims of counsel as to fraud may be boiled down to this one claim, namely, that the transaction in question was a foisting on to the Standard of worthless stocks and bonds in whose acquisition it had no interest. The reply to this claim is that it is not supported in any particular. The transaction was not a foisting; the bonds and stocks were not worthless; their acquisition was not a matter in which the Standard was not interested. The transaction was not a foisting, for the reason that Howard and the bondholders did nothing whatever that was fraudulent or wrong in order to induce the Standard to buy the stocks and bonds. They occupied no confidential relation toward the Standard and were under no duty to do it. They had a right to deal with it upon the same footing as with anybody else. They were guilty of no deceit or misleading, either by way of misrepresentation or by way of concealment, and they exerted no improper pressure. That being the case, and there being, as we have said, no confidential relation, there was no foisting, and the transaction was not impeachable, regardless of whether it was a good or bad bargain for the Plaintiff in Error.

The bonds and stocks were not worthless or nearly so. Considerable time was spent at the trial in going into the assets of the Northwestern Company and much has been said about the Northwestern being a bankrupt and defunct enterprise. It may be so now, but it was not so at the time of the purchase in question.

Throughout counsel's argument there is a constant shifting of the point of view from that time to the present. But at that time the completion of the Northwestern plant had not been wholly abandoned, and outside of its bonds the only indebtedness of the company was some \$17,000. The construction engineer, Mr. Davis, remained on the ground with the tools and equipment necessary to the continuation of the work. The bondholders were assured that the cessation of active construction was merely temporary and due to the panic. So far as they were informed it was an enterprise whose active prosecution had temporarily ceased, but which it was planned to resume as soon as business conditions improved. If this were done and the plant completed, the bonds were good for their face value. Nor were Mr. Dingee's assurances to be taken lightly. His collapse did not take place until much later, and he was still regarded as a rich man, although one pressed for ready money. This was the opinion of Mr. Young, according to his own testimony, and Mr. Young was in a far better position to know what Mr. Dingee's actual financial condition was than Mr. Howard or any of the stockholders. (Tr., p. 751.)

In this connection the fact is quite significant that the bondholders wanted Dingee's endorsement on the notes. They did not ask for Bachman's and were surprised when they got it, but they did want Dingee's. (Tr., pp. 190, 879.) This would hardly have been true if Dingee had been considered as a broken man. Furthermore in

this connection the fact should not be lost sight of that while active operations had stopped at Kendall, Mr. Davis, the engineer in charge of construction, and the construction machinery and equipment, remained on the ground ready to start active work again at any time. Counsel for defendant say that the Kendall scheme was abandoned in the fall of 1907. This is not true. There is no evidence to support the statement and it affirmatively appears that Mr. Davis did not leave and the machinery and equipment were not removed until August and September, 1908. (Tr., pp. 587, 597.)

Nor were the bonds worthless in any view of the case. They are not worthless to-day, although their value is very much less than when the Standard purchased them. The correctness of the Wenzelburger report has not been questioned and it shows that, taking the amounts due from the Standard and Santa Cruz at their face (and certainly the bondholders of the Northwestern in making a sale to the Standard were justified in so taking the debts of it and its sister company), there would be practically no loss to the Northwestern if it resumed construction, and if it did not resume and all that had been expended were lost, yet its assets aggregated something between eighty and ninety per cent of the face of its bonds.

Taking the trial balance on the last page of the Wenzelburger report, we get the following as a correct statement of the assets and liabilities of the Northwestern Company:

STATEMENT OF THE ASSETS AND LIABILITIES OF THE
NORTHWESTERN PORTLAND CEMENT COMPANY
ACCORDING TO THE WENZELBURGER REPORT,
OMITTING THE CAPITAL STOCK AND BONDS OF
THE COMPANY.

ASSETS.

Lands etc. upon which there had been expended	\$64,787.81
Under property account ...	\$31,325.20
" C. W. Howard account	500.
" Construction accounts:	
Mill expense	996.13
Expense	3,167.69
Machinery	2,473.54
Construction	11,521.95
" buildings ..	7,106.88
" railroad ...	7,452.04
Engineering	244.38
	<hr/>
	\$64,787.81
Due from Bellingham Bay etc. R. R. Co. on account of purchase of rails \$10,- 365.95, less amount due that company for freight, \$1239.05, or net	9,126.90
Stock of the Bellingham Bay etc. R. R. Co. costing	91,608.
Due from W. J. Dingee	9,486.07
Due from Standard Portland Cement Corporation	7,150.
Due from Santa Cruz Portland Cement Company	105,168.33
Cash	12.20
	<hr/>
Total of assets upon which the outstanding bonds of the company amounting to \$284,000. were a first lien	\$287,339.31

LIABILITIES.

Interest	\$ 2,233.42
Sundry accounts	3,325.89
Bellingham Bay Ind. Lumber Co.	\$ 742.76
Morse Hardware Co.	27.97
Keuffel & Esser Co.	51.87
The D. L. Haas Co.	93.50
Crane Co.	1.50
Cal. Powder Works	1,242.95
Allis-Chalmers Co.	1,109.34
Althof & Bahrs	56.
	<hr/>
	\$3,325.89
Santa Cruz Lime Co.	4,000.
Atlantic Portland Cement Co.	7,500.
	<hr/>
Total liabilities, omitting stocks and bonds	\$17,059.31

The foregoing statement omits as an asset \$14,220 paid as interest, and the items of \$5000, \$2000 and \$4000 due respectively from Bachman, McGary and Churchill. These latter sums were due on their subscriptions for bonds. On the other hand, the bonds so subscribed for had not been in fact delivered, and never were delivered, so that the amount of outstanding bonds is reduced by the same amount, that is from \$295,000, as shown by the trial balance, to \$284,000. We accordingly have as against \$284,000 of bonds, some \$287,339.31 in assets according to their book value. Against these assets there are liabilities aggregating only \$17,059.31, and of this aggregate only \$3,325.89 represents liabilities of such a nature as to give them

by any chance a preference over the lien of the bonds.

Nor is the book value of the assets out of the way. The largest single item is that of \$105,168.33, due from the Santa Cruz Company. As we have said, Howard and the bondholders in dealing with the Standard were justified in considering this item as worth its face. They certainly would have been justified in so doing had they known what was the fact, that while the Santa Cruz owed the Northwestern \$105,168.33, and the Standard owed the Northwestern only \$7150, yet the Standard owed the Santa Cruz some \$73,000. (See trial balances of Santa Cruz and Standard for April, 1908, appearing on pages 697 et seq. of Transcript). In other words, the Santa Cruz had \$73,000 coming to it from the Standard which it could apply on its debt to the Northwestern, and if there had come a tri-partite settlement between the three the Santa Cruz would have had to pay the Northwestern only some \$32,000, while the Standard would have had to pay it some \$80,000—\$7150 on its own account, and \$73,000 on behalf of the Santa Cruz.

The next largest item is that of \$91,608 for Bellingham Bay and B. C. stock. This stock had in fact been previously pledged to secure a debt of the Santa Cruz Company, but of this Howard and the bondholders were ignorant. (Tr., pp. 310-312, 566.) So far as they were concerned the stock was on hand.

A good deal has been said as to the poor condition of the railroad company. We do not desire to discuss

this question at length. Suffice it to say that while the statement from the company's books, put in evidence, shows practically no net earnings over and above the fixed charges, yet it shows that the earnings have been cut down on the books by writing off a large amount to depreciation, and the construction and equipment accounts show invested in the road very nearly one and a half million of dollars after deducting the floating indebtedness, while its bonded debt amounts to only some \$659,000. (Tr., pp. 686, 692.) The point of the matter, however, is that as to the cement company the control of the railroad was, as we have said, of great importance. The stock had been purchased for the cement company by its officers in good faith and the bondholders of the cement company were certainly justified in considering the railroad stock as worth to the company fully what had been paid for it.

As to the items of \$9,126.19 due from the railroad company, and \$9,486.07 due from Dingee personally, these likewise the bondholders were justified as considering worth their face. The railroad company was certainly equal to the payment of so small an amount, and as for Dingee, he was, as we have said, still looked upon as a very rich man.

There remains only the item of \$64,787.81, expended, and, so far as known, honestly expended, in the acquisition of lands at Kendall and in work on the lands. Evidence was introduced for the purpose of minimizing the value of these lands. The evidence was con-

fined to their value for purposes other than that of a cement plant. For any purpose but this it may well be said that they had but little value; but for this purpose they undoubtedly did have a very considerable value. They could probably be sold to-day for every cent of what they cost, which is the amount for which they are down on the company's books. The conclusive indication of their value, or at least of the fact that the bondholders considered them of value, and that after all is the point in this case, is the fact that Evans, who visited Kendall on several different occasions, was willing actually to invest his own money on his faith in these lands, that Howard was willing to permit his friends to invest in a scheme whose success depended entirely on these lands, and that Dingee and Bachman were ready to undertake the enterprise of establishing a mill upon the lands when the failure of the enterprise would surely hurt their reputations and credit as successful business men.

We submit, accordingly, that it must be taken that the lands were worth fully as much as the company paid for them, some \$17,000.

As to the amount that had been expended in work on the lands, this would be almost wholly lost if the enterprise were permanently given up, but it would not be lost if work were resumed, and it should be always remembered that the bondholders were assured work would be resumed (Tr., pp. 188, 189, 191), and that if it were resumed it would be directly in the interest

of the Standard. The amounts so expended aggregate between forty and fifty thousand dollars.

The net result is that as against \$284,000 of bonds that were a first lien and \$3500 of preferred claims, there were assets that even in liquidation should have brought between two hundred and forty thousand and two hundred and fifty thousand dollars. This is the result of an analysis of the Wenzelburger report, and it is also the estimate Evans put upon them at the time. (Tr., pp. 193, 217-220.) On the other hand, if the company were not liquidated but work were resumed at Kendall, there would be practically no loss whatever. This is the way in which Mr. Evans looked at the matter, according to his positive testimony, and we say that there is nothing in the evidence that does not justify his doing so.

Likewise it is not true that the Standard had no interest in the purchase of the Northwestern bonds and stocks. The Northwestern plant had been projected in part for the protection of the California plants. One of the purposes for which the Standard Corporation had been formed was to take over both the Kendall and the Santa Cruz mills and thus combine the three Dingee-Bachman companies. This alone was interest enough to justify the purchase. It was interest enough to warrant the bondholders in considering a sale to the Standard as perfectly legitimate. The Standard of all concerned was the one fundamentally interested in the successful accomplishment of the enterprise represented

by the Northwestern Company. In this connection it must be remembered that if Dingee and Bachman went on with the Northwestern to the successful completion of its plant, the Standard would not lose by the purchase of the Northwestern stocks and bonds. Here is the answer to the question put by counsel in several different forms. If the bonds were valuable, why were the bondholders anxious to dispose of them? The answer is that their full value depended on the company going ahead, and upon this point the bondholders were much dissatisfied. They had Dingee's assurances that the work would be resumed as soon as business condition warranted, but they could not tell how genuine these assurances were and they had no very effective means of compelling their performance. The Standard, however, was in a very different position. It had an interest in the Northwestern's going ahead over and above a mere investment interest. Its management was the same and it would know whether or not Dingee's assurances were genuine, and it would also know that its interests would be considered in determining the course to be pursued regarding the northern company.

But over and above all this the Standard had the very strongest interest in making an arrangement with the Northwestern bondholders. What alternative was presented to it? If Evans and the bondholders acting with him were not settled with, they would certainly seek to enforce their legal rights. Either directly as stockholders in the Northwestern, or through the medium of

a receiver for that company, they would certainly proceed against the Standard and the Santa Cruz to compel them to repay the moneys illegally diverted to them. A further investigation into Northwestern affairs was certain to disclose the as yet unknown pledge of the Bellingham Bay and British Columbia Railroad stock to secure a debt of the Santa Cruz Company, and suit would be brought on that ground as well. The bondholders would have had a perfect right to bring these suits. They were supported by genuine causes of action. But the mere bringing of them would have been disastrous to both the cement companies. Their credit was not strong as it was. Such suits would have ruined them. The Standard perhaps might have easily paid the sum owing by it to the Northwestern—some \$7150—but not so the Santa Cruz. For moneys diverted and stock pledged it owed—and to this day it owes—to the Northwestern something over two hundred thousand dollars. This in the spring of 1908 it could not hope to pay without securing time, and considerable time. The point of the matter is that the Standard was vitally interested in seeing that the Santa Cruz got this time.

For one thing the Standard owned \$211,000 of the bonds of the Santa Cruz. (Tr., p. 754.) This investment it was interested to protect, and was by section 10 of its articles of incorporation specially authorized to protect. For another thing, it itself, as we have said, owed the Santa Cruz some \$73,000, and if the Santa Cruz were called on to pay the Northwestern, the

Standard was certain to be called on to help to the extent of this \$73,000. For this it would itself require time.

For another thing, the failure of the Santa Cruz meant the failure of the Standard. The two companies were too closely linked for one to go down without the other going with it. When they finally did go under, in November, 1908, they went together.

But the fact that it was vital to the Standard to secure a settlement with the dissatisfied bondholders of the Northwestern is made most clear when we consider the revelations that would have been made by the bondholders' suits. Those suits would have disclosed instantly the financial weakness of both the Standard and the Santa Cruz, and that their managers had endeavored to bolster up both companies by illegally diverting to their assistance moneys and property of another company of which they had control. Neither company could have endured such disclosures to the banking and business community.

There is a good deal of talk in this case about the pressure exercised on Dingee to make him take up the bonds. Now, as a matter of fact, the bondholders did not seek to put any pressure on Dingee. They did not threaten him with either civil or criminal prosecution. Except for the incident of Howard sending him Evans' letter of March 4, 1908, the matter of his civil or criminal responsibility was not mentioned to him, nor were the disclosures of the Wenzelburger report discussed

with him. (Tr., pp. 124, 560.) The bondholders merely sent Howard to see Dingee to ask what he proposed to do. But suppose the bondholders had gone very much further—suppose they had gone to Mr. Dingee and said to him, “See here, you have taken our money which we invested in the Northwestern securities and diverted it to the needs of your two California companies. Now you make a satisfactory settlement with us. You have one of those companies relieve us of our Northwestern investments or we will immediately commence legal proceedings against them and you to recover the diverted moneys”—would there have been anything wrong in such a demand? The bondholders had a perfect right to commence legal proceedings and, as a condition of giving up this right, they had the right to demand of a company which had benefited by the diversion of their moneys that it relieve them of their investment. If the demand would not have been wrong, there would have been nothing wrong in their accepting a compliance with their demand. Now in this case no demand was made and there was no threat or attempt at pressure, but the fact that, if the Northwestern bondholders had threatened Mr. Dingee with suit against him and his companions it would not have been wrong, emphasizes strongly the propriety and legality of the settlement that was actually made.

In this connection we would speak of the contention so frequently advanced, that because the sales agency contracts were exclusive and the cement companies

marketed all their product through Howard's company and received payments therefor through the same channel, Dingee and his companies were subject to pressure by Howard through their fear of his cutting off their funds. But if Howard's company at any time had refused wrongfully to account and to pay to the cement companies what was due them they could have immediately terminated the agency. Furthermore, and more important, it appears both by Mr. Howard's testimony and Mr. Young's that there was never any attempt to shut off funds from the cement companies, or by this means to bring pressure to bear upon them. On the contrary, the evidence is that the Western Fuel Company and the Western Building Material Company made their payments with the utmost promptness, much to the advantage of the cement companies. The only instance in which the agency company held back money was that arising out of the failure of the Standard and the Santa Cruz to attend to the bills of the Western Building Material Company for deficient cement and returned bags. The dispute about this was settled at the end of February, 1908, and from that time on, and during the very time of the transaction in question here, Howard's company made its payments with the utmost promptness. Mr. Young himself admits this. (Tr. pp. 729, 730.) There was accordingly no pressure exercised upon Mr. Dingee in this respect.

It may be well at this point to speak of the matter of the drafts or bills which were drawn by the cement

companies on the Western Building Material Company and accepted by the latter. By the sales contracts the Western Building Material Company was required on the 14th and 28th of each month to pay for all cement delivered during the preceding month, one-half being payable on each date. During the year 1908 the Western Building Material Company permitted the cement companies to draw upon it against deliveries in advance of the day of payment, and it would accept these drafts, agreeing to pay them on the contract day of payment. In this manner the Western Building Material Company lent its credit to the cement companies for the period between the times of delivery and the times of payment according to the contract. There were a large number of these drafts and a list of them is in evidence. (Tr., pp. 340, 341.) The first of them is dated only a day or so after the interview between Howard and Dingee in which the purchase of the Northwestern bonds and stocks was arranged. From this coincidence of dates counsel has endeavored to make out that it was understood between Howard and Dingee that Howard would grant these acceptances if Dingee would take care of the Northwestern bondholders. Howard denies positively that there was any connection between the purchase of the stocks and bonds by the Standard and the acceptance of the drafts by the Western Building Material Company. (Tr., pp. 961, 963.) Why counsel wish to make out a connection we cannot see. We wish there were one. If

there were, there would be still another perfectly proper and valid consideration for the purchase. The Western Building Material Company was under no obligation to give these acceptances and to lend its credit. Its doing so was of the very greatest advantage to the cement companies. As Mr. Young testified (Tr., pp. 729, 730), it was the credit of the Western Building Material Company extended in this manner that kept the cement companies going for months. The cement companies could afford to pay, and to pay heavily, for the extension of that credit. If the Western Building Material Company had chosen to exact as the condition and consideration for its extending its credit that the Standard should purchase the Northwestern stocks and bonds, this in itself would have constituted a valid and sufficient reason and consideration for the purchase.

We believe that we have now covered all the essential facts bearing, or claimed to bear, on the question of fraud and conspiracy and counsels' contention regarding them. We submit that there is no ground whatever for a finding that there was fraud. Fraud is not lightly to be found. There must be evidence, and convincing evidence, to overcome the presumption of honesty and good faith to which every man is entitled. It is true that fraud can usually, or at least frequently, be shown only by way of inference from the facts directly appearing in evidence, but these inferences must flow naturally and strongly and convincingly from the evidenciary facts. In this case it is only by the most

strained inferences, by disregarding the natural deductions and probabilities, and by presuming men to be dishonest instead of honest, that it is possible to find any evidence whatever of fraud or conspiracy or wrongdoing on the part of Howard, Evans, Smith, or Spencer.

IV.

THE DEFENSE OF WANT OF CONSIDERATION.

Little need be said as to this defense. It is apparent that it does not exist. In order that the defense of want of consideration exist it is not sufficient that it appear that the consideration was inadequate, or even grossly inadequate, but it must appear that there was no consideration at all. Now in this case it is perfectly evident that there was a consideration for the notes sued upon, viz: the stocks and bonds of the Northwestern Company. Whether that consideration was adequate or inadequate is another question, but its existence puts an end at once to any claim that there was no consideration for the notes.

We would not be understood as saying that inadequacy of consideration, if it had existed, was not a factor to be considered. The point is that if it had existed it was not in and of itself a defense, but it was material only as a factor in determining whether or not there was fraud. Even if the consideration had been inadequate and yet it appeared that there was no fraud, there was no defense. The mere fact that the purchase of the

Northwestern stocks and bonds may have turned out to be unfortunate is not in and of itself a ground for rescinding the purchase. We cannot help adding at this point that if that purchase has turned out to be unfortunate it is not due to the purchase having been a bad one at the time, but to the Standard Company and its officers failing to go ahead with the northern project which had been conceived and started in the Standard's interest. But however this may be, the present point is that the notes in suit were supported by a consideration and accordingly are valid instruments, unless there exists some further defense such as that of fraud or want of authorization. The defense of want of consideration does not exist. The principles involved in the discussion of this point are elementary and we feel that we need cite no authorities to support them.

V.

THE DEFENSE OF WANT OF AUTHORIZATION FOR THE EXECUTION OF THE NOTES.

This defense is based upon the fact that the meeting of the Board of Directors which authorized the execution of the notes in suit was attended only by a bare quorum of three, of whom Mr. Dingee was one. It is said that Mr. Dingee had such a personal interest in the transaction as to disqualify him from voting and that, therefore, there was no valid resolution passed. The answer to this is twofold:

(a) The Plaintiff in Error is estopped from making this defense by the certificate of its secretary, accepted and acted upon by the bondholders.

One of the requirements of the bondholders, notably of Mr. Evans, as a condition to the sale of their stocks and bonds to the Standard in return for the latter's notes, was that the transaction be properly authorized by the Standard's Board of Directors, and it was definitely understood that this would be done. (Tr., p. 189; letter of Howard to Dingee of March 27, 1908, p. 879 of Transcript.) For the purpose of assuring the bondholders that it actually had been done and that the transaction was fully authorized on the part of the Standard Corporation, there was delivered to Mr. Norcross, at the time he turned over the stocks and bonds of the Northwestern and received the Standard's notes, a certificate of the secretary of the Standard, under its seal, to the effect that a resolution, which by its terms fully authorized the transaction, had been unanimously adopted by a majority of the corporation's Board of Directors at a meeting duly called and held. This certificate was accepted by Mr. Norcross for and on behalf of the bondholders as an assurance that a resolution had been actually and properly passed. Neither Mr. Norcross nor any of the bondholders knew personally that any meeting of the directors had ever been held or that any resolution of any sort had been passed at such meeting, but they were not obligated to inform themselves personally about these matters. They had a right

to rely upon the formal certificate of the secretary of the corporation under its seal that there was such a valid resolution. It would make no difference if there had never been any meeting of the Board of Directors at all. The corporation would be estopped from showing that fact.

Hawley v. Gray Bros., 106 Cal. 337;

Baird v. Bank of Washington, 11 Sergeant & Rawles, 411, 415.

(b) Dingee had no such interest in the transaction as to disqualify him from voting as a director of the Standard Corporation.

The rule that any transaction between a corporation and a director or other officer, which is effected on behalf of the corporation through the instrumentality or by the vote of such director or officer, may be avoided at the option of the corporation for that reason alone, regardless of the fairness or unfairness of the transaction, is based upon the general principle of public policy that a trustee cannot in his trust capacity deal with himself and that if he endeavors to do so the transaction may be avoided by the *cestui que trust* as of course. The most casual examination of the authorities holding such transactions voidable will reveal this to be the ground upon which they are put. See, for instance,

Pacific Vinegar Works v. Smith, 145 Cal. 352, 360 to 362.

The rule is accordingly confined to those cases which present the feature of a trustee attempting to deal with himself, that is, so far as corporate transactions are concerned it is confined to transactions in which the director or officer is actually an adverse party. It has no application to those cases in which the transaction is between a corporation and a third party, but is effected through the vote or instrumentality of a director or officer who has some personal or special interest or motive for having the transaction arranged.

We must not be understood as saying that such personal or special interest or motive on the part of the director or officer may not avoid the transaction. It may well do so. The point is that it will not do so unless the transaction was unfair. In other words, the question in such cases is one of actual fraud.

Herbert Kraft Co. v. Bryan, 140 Cal. 73, 79;

Sacramento Bank v. Copsey, 133 Cal. 659.

Now, in this case the transaction was not between the Standard and Dingee, but between the Standard and third persons, and, accordingly, unless there was actual fraud, the transaction could not be avoided merely by reason of some motive or interest on the part of Dingee. We do not desire to discuss further the question of such actual fraud. We believe the charge of conspiracy and fraud against Mr. Howard, Mr. Spencer, Mr. Evans and Mr. Smith to be simply preposterous.

It may not be amiss, however, to say something on the subject of Mr. Dingee's action in voting for and

putting through the purchase of the Northwestern bonds and stocks. The record discloses acts on the part of Mr. Dingee which, to put it very mildly, are hardly consistent with any great degree of scrupulousness. But in this particular transaction we believe he was acting simply for the best interests of the two local cement companies which he controlled and that he is not subject to just criticism. In fact it was just as much to the Standard Corporation's interest that the Northwestern bondholders be settled with as it was to Dingee's personal interest. As we have said, it was vital to the Standard to have such settlement. If it were not made both the Santa Cruz and the Standard were certain to be sued for the Northwestern moneys which had been practically stolen to help those two corporations out, and such a suit, and the disclosures which it would necessarily involve, would mean bankruptcy for both companies.

Under these circumstances we do not believe the transaction was affected by the alleged personal interest of Mr. Dingee. That interest, in fact, was very slight. The wrongs which he committed upon the Northwestern were done on behalf of the Standard and the Santa Cruz. No threat of proceedings against him, either civil or criminal, had been made to him. Absolutely the only intimation to him of such a thing was in the letter of Evans to Howard of March 4, 1908, which Howard apparently sent to Dingee, and to which we have already referred. The statement in that letter was

simply to the effect that Dingee was criminally liable according to the laws of British Columbia, and it certainly cannot be considered that such a statement, particularly when not made directly to Dingee but in a private letter to a third person, gave Dingee such a personal interest as to invalidate the subsequent purchase by the Standard. We all know how slight is the danger of criminal prosecution in such cases in this country. Mr. Dingee must have known this also. He was too old and experienced a bird to be seriously alarmed by a statement of the almost casual character of that of Mr. Evans. He undoubtedly did not like the statement, but that he really feared a criminal prosecution is not to be believed. The utmost that he could have really feared was that the Northwestern bondholders would pursue their civil remedies, as they had a perfect right to do, and show up the financial condition of his cement companies and involve them in the difficulties that were certain to ensue upon such a disclosure. The thing that really impelled Dingee was the protection of those companies, of which the defendant was one. We submit that the purchase of the Northwestern bonds and stocks by the Standard was in fact for the best interests of that company and was not affected in any way by any personal fear or interest on the part of Mr. Dingee.

We will not discuss this matter further than to repeat what we have already said, that Howard and the bondholders made no attempt of any sort to bring any pressure to bear upon Dingee. The diversion of the North-

western moneys was not discussed with him. (Tr., pp. 560, 565, 566, 962.) In fact there had never been any discussion with him as to what he would do about the Northwestern matter. (Tr., pp. 962, 963.) The bondholders had no plan of action when they sent Mr. Howard to Mr. Dingee. He was simply to learn what Dingee would do. Dingee was not moved by any agreement or understanding that he or Bachman was to be absolved from responsibility. His responsibility was never discussed and no proposition of any sort was made to him by the bondholders. It was he that made a proposition to them, not they to him. They simply went to him through Howard and asked him what he proposed to do about the Northwestern plant, and he said he intended to go on with it, but not immediately, because of hard times, but that if Howard's friends were uneasy the Standard would buy their holdings. The bondholders accepted this offer, which was Dingee's proposition and not theirs. Nothing further or different was ever considered between them. (Tr., pp. 966, 968, 977, 978.) Certainly such a transaction was perfectly upright and legal.

VI.

THE EFFECT OF THE FAILURE OF THE STANDARD CORPORATION TO RETURN, OR OFFER TO RETURN, BONDS AND STOCKS OF THE NORTHWESTERN COMPANY RECEIVED IN RETURN FOR THE NOTES.

The effect of the failure of the Standard Corporation to return, or to offer to return, the consideration which it received for the issuance of its notes is that it does not now make a particle of difference whether those notes were originally valid or invalid. It is too late for the Plaintiff in Error to deny responsibility upon them. It received the stocks and bonds which were the consideration for the notes at the time the latter were executed, that is, in May, 1908. The transaction, whether duly authorized or not, or whether fraudulent or not, was spread at large on the minutes of the corporation. This was notice to the corporation of the transaction. Furthermore, Mr. Young, the secretary of the defendant, who is not claimed to have been a party to the alleged fraud, knew of the transaction from the beginning, and in November or December, 1908, after there had been a complete change in the Standard's management, called the attention of the new management to the existence of the notes and to the transaction in connection with which they were issued. (Tr., pp. 752, 753.) Later, between that time and May, 1908, he discussed the matter with other officers of the

company. (T., pp. 937, 938.) This new management has continued to the present time and has not only not been subject to the dictation of Mr. Dingee, but, as may fairly be inferred from the record, has been positively hostile to him. Nevertheless, from the day on which the new management was informed of the transaction down to this, a period of four years, during which the securities given in consideration for the notes have been steadily deteriorating, nothing whatever has been done by the Plaintiff in Error to return, or to offer to return, or even to put itself in a position where it could return, those securities. This is a complete ratification of the transaction by acquiescence and estoppel both. This is not open to serious dispute. The code section is sufficient to settle it.

Section 1691 of the Civil Code reads:

“Sec. 1691. Rescission, when not effected by consent, can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules:

“1. He must rescind promptly, upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence, or disability, and is aware of his right to rescind; and,

“2. He must restore to the other party everything of value which he has received from him under the contract; or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable or positively refuses to do so.”

The question is likewise fully settled by the authori-

ties. Thus, for an instance in which it was held that the defense of fraud was not available in an action upon a promissory note where the maker of the note had failed to return promptly the consideration for the note (some mining stocks), see

Gifford v. Carvill, 29 Cal. 589, 592.

To the same effect see also:

Hernan v. Haffenegger, 54 Cal. 161;

Gamble v. Tripp, 99 Cal. 223;

Martin v. Burns Wine Company, 99 Cal. 355;

Kelly v. Owens, 120 Cal. 502;

Westerfeld v. N. Y. Life Ins. Co., 129 Cal. 68;

McGue v. Rommel, 148 Cal. 539.

For an instance where the defense of *ultra vires* was not permitted to a corporation when it had failed to return the consideration which it received through the transaction, which it now claimed to be beyond its power, see:

Main v. Casserly, 67 Cal. 127;

Lawrence v. Johnson, 131 Cal. 175.

For an instance in which a corporation was held upon its promissory notes, although it appeared that they had been issued both without the necessary authorization of its board of directors and by an officer who was personally interested in and benefited by their issuance, see:

Phillips v. Sanger Lumber Co., 130 Cal. 431.

See also:

Barr v. N. Y., etc., R. R. Co., 125 N. Y. 263;

White v. Latham, 143 U. S. 567;

Twin Lick Oil Co. v. Maybury, 91 U. S. 587;

Gribble v. Columbus Brewing Co., 100 Cal. 67;

Buena Vista etc. Co., v. Tuohy, 107 Cal. 243.

The reply of counsel for Plaintiff in Error to these authorities and the rule enunciated by them seems to be:

First, that the Standard never received the Northwestern stocks and bonds which were the consideration for the notes;

Second, that if the Standard did receive the stocks and bonds, it subsequently turned them over to the Northwestern and that there is an exception to the general rule requiring the return of the consideration before there can be a rescission, to the effect that when the defrauded party has parted with or lost the consideration, he is relieved from the necessity of returning it.

Third, that the Northwestern stocks and bonds were valueless and therefore need not be returned.

We will take these points up in order:

First: The Standard did receive the stocks and bonds of the Northwestern which were the consideration for the notes in suit;

That the stocks and bonds of the Northwestern were actually delivered to the Standard does not admit of dispute. They were delivered in accordance with a letter by Mr. Norcross to the Standard Corporation

itself. (Letter of May 4, 1908, pp. 730-733 of Transcript, and Young's account, pp. 734 and 735.) The stock certificates were not endorsed in blank but were endorsed to the order of the Standard, and later when the stock was transferred into the name of Mr. Young, Secretary, the certificates were indorsed by the Standard. (Tr., pp. 711-715.) The Standard likewise gave Mr. Norcross a receipt in its name for the stocks and bonds. (Tr., p. 745.)

The contention of counsel is that nevertheless the Standard did not actually receive the stocks and bonds because, as a part of the alleged fraudulent scheme, it was understood between Dingee and the bondholders that the stocks and bonds were really to go to the Northwestern and not to the Standard, and that, pursuant to this understanding, they were immediately transferred into the treasury of the Northwestern.

The point of the matter is that, regardless of whether or not the sale to the Standard was accomplished by fraud or other wrongful means, there is not one particle of evidence to justify the statement that there was any understanding that the stocks and bonds were to go to the Northwestern and not to the Standard. No one testifies to any such understanding and there is nothing from which it can be inferred. On the contrary, it is positively denied by all the parties to the transaction, it is inherently improbable, and the accompanying circumstances point not only to a contrary conclusion, but to the fact that the stocks and bonds never were turned over to the Northwestern.

Evans, Howard and Smith all testify that they had no understanding as to what disposition would be made of the stocks and bonds after their delivery to the Standard and that they did not even know until the trial that it was claimed that the Standard had turned them over to the Northwestern. (Tr., pp. 964-966, 968, 977, 978.)

The thing is inherently improbable because Howard and the bondholders had absolutely no further interest in the Northwestern or in what disposition was made of the stocks and bonds, and there was no occasion for any such understanding.

The accompanying facts are:

(a) In November, 1908, when Mr. Young was listing these notes as liabilities of the Standard, he put them down as given for the "purchase" of the Northwestern bonds and stocks without any qualification or explanation. (Tr., p. 930.) He would have been extremely unlikely to have done this if he had conceived that the purchase had not been in fact for the Standard.

(b) No entry was made in the books of the Northwestern to show the cancellation of the bonds or stocks. Young testifies that, in the way in which the capital account of the Northwestern was kept, no entry would have been made in any case as to the stock. (Tr., pp. 939, 940, 941.) But this is not true as to the bond account. As to it an entry would in ordinary course, according to the manner in which the company's books were kept, have been made of the surrender of any out-

standing bonds, and there is no such entry. (Tr., pp. 940, 941.) If the stocks and bonds were really surrendered to the Northwestern, then the books of that company do not truly show the condition of that company as to either its stocks or bonds.

(c) There is no charge or claim made by the Standard against the Northwestern on account of the transaction, and yet if the Standard had given its notes to make a purchase not on its own behalf, but on behalf of the Northwestern, an entry of a charge against the Northwestern for the liability thus assumed for it would certainly have been made. Later, when the matter of waiving the statute of limitations as between the companies came up, the Standard and Santa Cruz waived the statute as to claims against them by the Northwestern, but the Northwestern made no waiver as to claims against it by the Standard, for the very apparent reason that it was not conceived that any claim existed. (Tr., p. 948.) Yet if defendants' counsels' theory is correct such a claim must have existed. It is to be noted that this matter of waiving the statute of limitations came up after the new management was in charge of the cement companies and was informed as to this transaction.

Finally we would call attention to the fact that Mr. Young, the Secretary of the Standard, has all along had and now has possession of the bonds, (Tr., pp. 747, 748, 943), and that he had possession of the stock at the time he first called the attention of the new man-

agement of the Standard to the fact of these notes being out. It was, therefore, possible at that time for the Standard to return both the stocks and the bonds, and it was incumbent upon it to act promptly if it desired to disaffirm the notes. Furthermore, it has all along been possible for the Standard to return the bonds, if not the stocks, and it has never done so, or offered to do so. It certainly cannot disaffirm the notes without returning as much of the consideration as it is within its power to return.

In this connection we would ask the court to consider what action should have been taken by the Plaintiff in Error if it was to disaffirm the transaction promptly, as it was its duty to do if it would disaffirm at all. Certainly it was its duty promptly to put itself in a position where it could, as far as possible, return the consideration which the bondholders had given. It was its duty to demand of Mr. Young, who had the custody of both the stocks and bonds for months after the new management of the Standard knew of the existence of the notes and why they had been given, to join with the Standard in returning them to the bondholders and in disaffirming the purchase. No such demand has ever been made and in fact no attempt of any sort has been made to return to the bondholders the securities which they turned over in consideration for the defendant's notes. (Tr., pp. 751, 943.) Can there be any doubt but that if such a demand had been made Mr. Young would have complied with it and joined in a tender of the North-

western stocks and bonds to their former owners? (See his testimony on pp. 943 and 955 of Transcript.)

Assuming that the Northwestern was a wholly independent concern, can there be any doubt but that if a demand had been made upon it that it join in a tender back of the stocks and bonds, it would have done so? If the theory of defendants' counsel be correct, the Northwestern got the stocks and bonds through a fraud upon the Standard, and it would either have to protect the Standard against the latter's liability on its notes or join with it in disaffirming the whole transaction. As between the alternatives of paying the notes, aggregating \$90,000, or joining in a disaffirmance of the transaction, the Northwestern would certainly have chosen the latter course.

But suppose the Northwestern had simply refused to do anything, and Mr. Young and it had maintained that it owned the stocks and bonds, what was the course which the Standard should have pursued, if it were to fulfill the legal obligation resting upon it to disaffirm the transaction promptly upon discovering the fraud? The course is clear. The Standard should have immediately brought suit against both the bondholders and the Northwestern to disaffirm the whole transaction and through the process of the court to compel the cancellation of the notes and the return of the Northwestern stocks and bonds which that company had received without a dollar of consideration moving from it. If the facts were as defendants' counsel claim they

were, such a suit could have been maintained, and it was the duty of the Standard to bring it, and to bring it promptly, and thus disaffirm its liability on the notes. It has never done this, or done anything else looking to a disaffirmance and rescission of the transaction. Not having done so, it cannot now escape liability on the notes.

Second: It is not true, as counsel claim, that there is an exception to the rule requiring a return of the consideration as a condition of the disaffirmance of liability, to the effect that, if the party entitled originally to disaffirm has parted with or lost the consideration, he can still disaffirm. The rule is that in such a case the right to disaffirm is lost and the injured party must rely solely upon an action for damages for the fraud or other wrong perpetrated upon him. We do not believe that the stocks and bonds in this case were in fact ever turned over to the Northwestern. If they were, they were turned over by the Standard itself without the knowledge or connivance in any way of the former bondholders. There is not a scintilla of evidence to justify a conclusion to the contrary. This being the case, the Standard lost its right of disaffirmance, if it ever existed, and is relegated for relief to an action for damages. This is settled by the California decisions. Thus in

Herman v. Haffenegger, 54 Cal. 161,

the plaintiff sought to recover back, on the ground of fraud, certain land which he had sold. The considera-

tion which he received does not appear with exactness in the report of the case, but it appears at the bottom of page 163 that it consisted, in part at least, of an interest in something—in just what it does not appear—and certain shares. This interest and these shares the plaintiff had sold and did not have at the time he offered to rescind. Upon these facts the court held (p. 164) :

“The plaintiff had received of defendant something of value, and we do not find in the testimony any return or offer to return to defendant, that which plaintiff had received of him. The plaintiff, indeed, as the testimony shows, did not then own what he had so received. He could not maintain the action until he had so returned, or offered to do so. This was a condition precedent to his maintenance of the action. And as he did not comply with this requisite, the nonsuit was properly granted.”

In

Bailey v. Fox, 78 Cal. 389,

the plaintiff sought to rescind, on the ground of fraud, a purchase from the defendant of a one-third interest in a stock of hardware and agricultural implements. The plaintiff offered to rescind before bringing his action, but at that time a considerable portion of the stock of goods had been sold. The lower court found there was fraud and decreed rescission. Upon appeal the judgment of the lower court was reversed, the Supreme Court saying:

“The judgment in favor of the plaintiffs is erroneous for several reasons:

"1.

"2. The tender made upon an offer to rescind was insufficient.

"3. It appears to have been impossible, at the time of the offer to rescind, to place the defendant in statu quo.

"4.

The Court then proceeds to discuss the several reasons so summarized, and of those numbered 2 and 3 it says:

"2. The tender made was not of the goods purchased, as a great part of them had been sold. The offer was to deliver the goods on hand, and pay the amount realized from the sale of those disposed of. This was not sufficient. Upon a rescission, the defendant, before paying back the purchase money and delivering up the notes, was entitled to receive the identical things sold. He was not bound to take the price at which they were sold. That might, so far as we know, have been less than their value. But whether it was or not, the rule is well settled, that where the party complaining has parted with the thing purchased, he cannot rescind, but must resort to an action for damages. (*Herman v. Haffenegger*, 54 Cal. 161. *Cobb v. Hatfield*, 46 N. Y. 533; Benjamin on Sales, Sec. 452.)

3. Again, at the time the offer to rescind was made, it had become impossible by the act of the plaintiff himself, or jointly with the other active partner, to place the defendant in statu quo.

As a result of the sale, a partnership had been formed, as we have stated, and the whole of the stock had become partnership property, in which Meinecke, who was not made a party to this action, had an interest. A large part of the stock had been sold, and new stock purchased on credit, for which the defendant as well as the other partners was personally liable. This being

the situation of affairs, it was utterly impossible to place any of the parties in statu quo. It is well settled that under such circumstances there can be no rescission of the contract. (Civ. Code, Sec. 1691; *Herman v. Haffenegger*, 54 Cal. 161; *Pullman v. Alley*, 35 N. Y. 637; *Gould v. Cayuga County National Bank*, 86 N. Y. 75; *Sinclair v. Neil*, 8 Hun. 80; *Hogan v. Meyer*, 5 Hill, 389; *Matteawan Co. v. Bentley*, 13 Barb. 641; *Kerr on Fraud*, 48, 328; *Benjamin on Sales*, Sec. 452; *Fry on Specific Performance*, Sec. 706; 1 *Wharton on Contracts*, Sec. 286; *Cobb v. Hatfield*, 46 N. Y. 533.)

Kelly v. Owen, 120 Cal. 502,

was decided in banc on rehearing and without dissent. It was an attempt to rescind an exchange between the plaintiff and the defendant of certain land in return for certain shares of stock. The ground of the action was fraud. The plaintiff, however, had permitted the shares of stock received by him to be sold for assessments. The rules governing rescission are discussed at some length, together with the exceptions—or rather the apparent exceptions, for they are but apparent—to the requirement of a full restoration of the consideration received by the rescinding party, but no such exception as counsel rely on is stated. On the contrary, the decision directly holds that because the plaintiff no longer owned the stock, since it had been sold for assessments, and, therefore, could not restore it, there could be no rescission, and the judgment of the lower court to the contrary is reversed.

The case of

California etc. Co. v. Schiappa-Pietra, 151 Cal.
732,

is cited by defendants' counsel in support of their contention. In view of the fact that this decision quotes at length from *Kelley v. Owens, supra*, and purports to follow it, it would be rather remarkable if, in direct contravention of that decision, it allowed the exception for which counsel contend. But it does nothing of the sort. It was an action brought for the very purpose of effecting the rescission of a purchase of land, the ground alleged being fraud. The complaint set out at length the facts of the case, from which it appeared that it was impossible for the plaintiff to tell in advance of an accounting by the court just what the defendant would be entitled to in order to effect a full restoration and to place the parties in *statu quo*. The complaint, accordingly, did not allege a prior restoration, or offer to restore, but prayed that the court determine just the sum the plaintiff should restore, and then offered to restore it. The complaint was demurred to, and the demurrer sustained in the lower court, and judgment rendered upon the plaintiff's refusal to amend. Upon appeal the whole point of the discussion was simply as to whether there had to be *prior to the action* a restoration or offer to restore. That there had to be a full and complete restoration was expressly assumed. The discussion was simply as to the cases in which a plaintiff could maintain an action to effect a rescission without having, *prior*

to the action, made an offer to restore. It was held that such prior offer would not be required where the facts were such that a decree of the court was necessary either by way of accounting or otherwise, in order to determine just what the defendant would be entitled to upon a restoration, or where the plaintiff could not safely make the offer because he was entitled, in case of rescission, to a charge upon the thing to be restored, which charge would be lost in case the thing were delivered unconditionally to the defendant. There is nowhere in the case a hint even that where the plaintiff has parted with the consideration so that he cannot restore it, he can still rescind.

In this case there are no complicated facts requiring a decree of court in order to enable Plaintiff in Error to know what it should restore. It simply had to offer to restore the stocks and bonds received. But over and beyond all this is the fact that the defendant does not seek to rescind. It seeks no such relief. The granting of such relief by the court would be entirely beyond and outside the pleadings. The answer of the defendant, so far from seeking to rescind and offering to restore the consideration, alleges that it never received any consideration. This allegation was vital to the answer and without it the answer would have been open to general demurrer. The uncontradicted facts show that the allegation is untrue, and, being untrue, there is a fatal variance between the proof and the pleadings and the plaintiff is entitled to judgment.

Third: There remains the contention of defendants' counsel that no return of the stocks and bonds was required because they were worthless. It is true that where the consideration received is absolutely worthless so that its return would be wholly useless and meaningless, it need not be returned as a condition to a disaffirmance. But the consideration must, as we have said, be absolutely worthless. If it has any value at all, it must be returned.

The authorities in support of this statement of the rule are numerous and uniform. Thus in

Gifford v. Carvill, 29 Cal. 589,

already referred to, the Court said:

"There is no averment in the answer, and no evidence, that defendant rescinded the contract and returned, or made a tender of the stock, and no averment that it was of no value, unless the averment that it was 'of little or no value' can be so construed. If it was not absolutely without value to either party—if it had a little value—there was a consideration which, being actually retained, did not afterward fail, and it was necessary to rescind the contract and return the consideration within a reasonable time after the discovery of the fraud. We are inclined to think that the allegation cannot be regarded as an averment that there was no value. It must be construed most strongly against the pleader, and the implication is that it might have been of some, though little, value."

See also:

Wolf v. Dietzsch, 75 Ill. 205;

Morrow v. Rees, 69 Pa. St. 368;

Connor v. Henderson, 15 Mass. 319; 8 Am. Dec. 103;

Perlay v. Balch, 23 Pick. 83; 34 Am. Dec. 56;

Haase v. Mitchell, 58 Ind. 213;

Coolidge v. Brigham, 42 Mass. 547;

Cook v. Gilman, 34 N. H. 556;

Evans v. Gale, 21 N. H. 240, 245;

Bassett v. Brown, 105 Mass. 55.

Now, in this case it cannot be contended that the Northwestern stocks and bonds were absolutely worthless at the time they were received by the defendant, or that they have become so since. The bonds constituted a first lien on all the assets of the company. We have already gone into those assets at some length and there is no need of our doing so again. Suffice it to say that there is one asset alone which would make the bonds of very considerable value, viz: the right which the Northwestern Company has all along had, and still has, against the Santa Cruz Company to recover something over \$105,000 for money illegally diverted to the use of the latter, and to recover something over \$90,000 because of the stock of the Bellingham Bay and B. C. R. R. Co., which was illegally pledged to secure a debt of the Santa Cruz Company.

We accordingly respectfully submit that, no matter whether or not the defendant originally had any valid

defense to the notes in suit, that defense has been lost by the failure of the defendant promptly to return, or to offer to return, the consideration which it received for the notes.

We respectfully submit that in no possible view of this case is the judgment against the Plaintiff in Error either erroneous or unjust, or should it be reversed.

Respectfully submitted,

J. R. PRINGLE,

McCUTCHEN, OLNEY & WILLARD,

Counsel for Defendants in Error.

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

R. M. COBBAN, E. B. WEIRICK, Individually and
Also as Trustee, and THE PAYETTE LUMBER
& MANUFACTURING COMPANY, a Corpora-
tion,

Appellants,

VS.

MOLLIE CONKLIN,

Appellee.

VOLUME I.
(Pages 1 to 256, Inclusive.)

Upon Appeal from the United States District Court for the
District of Idaho, Southern Division.

FILED

FEB 4 - 1913

No. 2236

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

R. M. COBBAN, E. B. WEIRICK, Individually and
Also as Trustee, and THE PAYETTE LUMBER
& MANUFACTURING COMPANY, a Corpora-
tion,

Appellants,

VS.

MOLLIE CONKLIN,

Appellee.

VOLUME I.
(Pages 1 to 256, Inclusive.)

Upon Appeal from the United States District Court for the
District of Idaho, Southern Division.

INDEX OF PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Amended Answer, Separate, of Defendant Pay-	
ette Lumber and Manufacturing Company	40
Amended Bill of Complaint.....	1
Answer of Defendants R. M. Cobban and E. B.	
Weirick	65
Assignment of Errors.....	536
Attorneys of Record, Names and Addresses of	1
Bill of Complaint, Amended.....	1
Bond on Appeal.....	545
Certificate of Clerk U. S. District Court to Tran-	
script of Record, etc.	551
Certificate of Special Examiner to Depositions,	
etc.	311
Citation	549
Commission to Notary Public Holton to Take	
Certain Testimony	285
Decree	522
DEPOSITIONS ON BEHALF OF COM-	
PLAINANTS:	
COLEMAN, MRS. S. J.....	302
Cross-examination	309
SWAYNE, R. B.	300
Cross-examination	302

Index.	Page
DEPOSITIONS ON BEHALF OF COM- PLAINANTS—Continued:	
WRIGHT, H. M.	288
Cross-examination	297
Redirect Examination	299
DEPOSITIONS ON BEHALF OF DEFEND- ANTS:	
BENSON, JOHN A.	377
Cross-examination	397
Redirect Examination	434
Recross-examination	440
CAMPBELL, J. C.	316
Cross-examination	328
GLOVER, CLARA E.	369
Cross-examination	371
LAVENSON, JAMES H.	365
Cross-examination	367
Examiner's Certificate to Testimony, etc.....	241
Examiner's Certificate to Testimony, etc.....	284
EXHIBITS:	
Complainants' Exhibit "D" (List of Pow- ers of Attorney).....	469
Complainants' Exhibit "G" (Statement of Account Rendered to Reddy, Campbell & Metson)	468
Complainants' Exhibit "N" (Letter Dated San Francisco, December 11, 1901, from J. C. Campbell to A. R. Conklin)	475
Complainants' Exhibit "N-1" (Letter Dated San Francisco, Cal., December	

EXHIBITS—Continued:

11, 1901, from John A. Benson to J. C. Campbell)	476
Complainants' Exhibit "O" (Letter Dated January 29, 1902, from J. C. Campbell to N. E. Conklin).....	478
Complainants' Exhibit "P" (Letter Dated October 27, 1902, from J. C. Campbell to Norman Conklin)	479
Complainants' Exhibit "Q" (Letter Dated San Francisco, November 7, 1902, from W. H. Metson to N. E. Conklin).....	481
Complainants' Exhibit "R" (Unsigned Letter Dated Bakersfield, Cal., June 13, 1902, Addressed to the Bank of California)	482
Complainants' Exhibit "S" (Letter Dated Bakersfield, Cal., June 13, 1902, from Mollie Conklin to the Anglo-California Bank)	482
Complainants' Exhibit "T" (Revocation of Powers of Attorney Signed by Mollie Conklin)	483
Complainants' Exhibit "U-1" (Letter Dated Bakersfield, Cal., April 28, 1903, from Mollie Conklin to John A. Benson).....	484
Complainants' Exhibit "U-2" (Postoffice Receipt).....	231
Complainants' Exhibit "U-3" (Registry	

	Index.	Page
EXHIBITS—Continued:		
Return Receipt from Postmaster at San Francisco to John A. Benson)		231
Complainants' Exhibit "V" (Amended De- cree in Re Estate of Alvah Russell Conklin)		464
Complainants' Exhibit "W" (Receipt for Swamp Land Patents Dated July 11, 1900, from N. E. Conklin to John A. Benson)		467
Defendants' Exhibit "A" (Relinquishment of Lands from Mollie Conklin and Ed- ward A. Reddy to the United States of America)		454
Defendants' Exhibit "A" (Deed Dated May 19, 1903, from E. B. Weirick to the Pay- ette Lumber and Manufacturing Com- pany)		485
Defendants' Exhibit "B" (Order Authoriz- ing Surrender of Lands)		457
List of Powers of Attorney		469
Names and Addresses of Attorneys of Record . .		1
Opinion		487
Order Relative to Exhibits on Appeal		548
Petition for Appeal and Order Allowing Ap- peal		544
Powers of Attorney, List of		469
Replication of Mollie Conklin to Answer of R. M. Cobban et al.		118
Replication of Mollie Conklin to Answer of Payette Lumber & Mfg. Co.		64

Index.	Page
Return to Record.....	550
Separate Amended Answer of Defendant Pay- ette Lumber and Manufacturing Company.	40
Stipulation of Facts.....	520
Stipulation Relative to Record on Appeal.....	532
TESTIMONY ON BEHALF OF COMPLAIN- ANTS:	
CONKLIN, MRS. MOLLIE.....	121
Cross-examination.....	167
Redirect Examination.....	182
CONKLIN, N. E.....	198
Cross-examination.....	235
OLCESE, MRS. MARGARET CONKLIN.	185
Cross-examination.....	194
Redirect Examination.....	198
TESTIMONY ON BEHALF OF DEFEND- ANTS:	
COBBAN, R. M.....	258
Cross-examination.....	266
Redirect Examination.....	277
HOOVER, E. M.....	280
Cross-examination.....	281
Redirect Examination.....	282
Recross-examination.....	283
WEIRICK, E. B.....	243
Cross-examination.....	251
Testimony Taken at Boise, Idaho, June 24, 1910, Before Special Examiner McCracken.....	242
Testimony Taken January 3, 1910, Before Spe- cial Examiner McCracken.....	120

[Names and Addresses of Attorneys of Record.]

J. H. RICHARDS and OLIVER O. HAGA, Esqrs.,
Boise, Idaho,

Attorneys for Appellants.

N. E. CONKLIN, Esq., Berkeley, California,

WM. B. DAVIDSON, Esq., Boise, Idaho,

Attorneys for Appellee.

*In the Circuit Court of the United States for the
District of Idaho, in the Ninth Judicial Cir-
cuit, Central Division.*

IN EQUITY.

MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually,
and Also as Trustee, PAYETTE LUMBER
AND MANUFACTURING COMPANY, a
Corporation, JOHN DOE, MARY DOE,
RICHARD ROE and THOMAS ROE,

Defendants.

Amended Bill of Complaint.

Comes now Mollie Conklin, complainant in the above-entitled cause, and complains of R. M. Cobban, E. B. Weirick, in his individual capacity and also as trustee, Payette Lumber and Manufacturing Company, a corporation, John Doe, Mary Doe, Richard Roe and Thomas Roe, defendants, and for cause of complaint alleges:

I.

That complainant is domiciled in, and is a citizen of the State of California, United States of America, and is a resident of the town of Berkeley, in said last-named State; that she was the wife and is the widow of A. R. Conklin, who is dead, and who is hereinafter mentioned.

II.

That E. B. Weirick, who is sued herein individually and also as trustee, is domiciled in, and is a citizen of, the State of Montana, United States of America, and is a resident of the city [1*] of Butte, in the county of Silver Bow, in said last-named State.

III.

That defendant, R. M. Cobban, is domiciled in, and is a citizen of, the State of Montana, United States of America, and is a resident of the city of Missoula, in the county of Missoula, in said last-named State.

IV.

That defendant, Payette Lumber and Manufacturing Company, a corporation, is a corporation organized and existing under and by virtue of the laws of the State of Minnesota, United States of America, and is domiciled in, and is a citizen, and a resident, of said last-named State; that said corporation is, among other things, authorized to engage generally in the business of acquiring, buying and selling, and of carrying on commerce in, timber and timber lands in said State of Minnesota and elsewhere; that said corporation is, and continuously, for more than one and one-half years immediately preceding the

*Page-number appearing at foot of page of original certified Record.

commencement of this action, has been doing business in the State of Idaho, and in the county of Boise, and elsewhere, in said last-named State, by permission of said State of Idaho and under its laws.

V.

That defendant, John Doe, is a citizen of the State of Montana; that defendants, Mary Doe, Richard Roe and Thomas Roe, are citizens of the State of Minnesota; that complainant does not know, and is unable to ascertain, the true names of said defendants, John Doe, Mary Doe, Richard Roe and Thomas Roe, which are their fictitious and not their real names, and prays that she may substitute the real names of said defendants herein [2] when such real names shall have been ascertained.

VI.

Plaintiff alleges that the value of the lands in controversy herein, and hereinafter mentioned and called and known as "lieu land," is largely in excess of \$5,000.00; and that the undivided one-half interest in controversy herein, as between this plaintiff and these defendants, is in excess of the value of Five Thousand Dollars (\$5,000).

VII.

That complainant is the owner in fee, as tenant in common, of an undivided one-half interest in said lands hereinafter mentioned; that she is entitled to the immediate possession of said lands and of the whole thereof; that said lands are not in the possession of complainant nor of defendants, nor either of them; that said lands, on the contrary, are vacant, unoccupied, wild and uncultivated timber lands, and

are not in the possession of any person; that said lands are situated in the State of Idaho, United States of America, and in the county of Boise, in said State, and are described as follows, to wit:

1. SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 19, tp. 13 N., R. 5 E., B. M.
2. NW. $\frac{1}{4}$; SW. $\frac{1}{4}$; S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of sec. 26, tp. 16 N., R. 4 E., B. M.
3. N. $\frac{1}{2}$ of NE. $\frac{1}{4}$; SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$; NW. $\frac{1}{4}$, N. $\frac{1}{2}$ of SW. $\frac{1}{4}$; NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of sec. 17, tp. 16 N., R. 4 E., B. M.
4. NW. $\frac{1}{4}$; N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of sec. 35, tp. 16 N., R. 4 E., B. M. [3]
5. SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of sec. 29, tp. 16 N., R. 5 E., B. M.
6. NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of sec. 7, tp. 13 N., R. 5 E., B. M.

The northwest quarter of section 26, tp. 16 north, range 4 east; the west half of southeast quarter, east half of southwest quarter, lots three and four, section nineteen, township fifteen north, range four east; the southeast quarter, east half of northeast quarter, section twenty-five, township fifteen north, range three east; lots one and four, section thirty-five, township twelve north, range three east, Boise meridian; lot four, section five, township fifteen north, range four east; lot two, section five, township fifteen north, range four east; southeast quarter of northeast quarter, section twenty-nine, township sixteen north, range four east; lot four and south half of northwest quarter, section four, township fifteen north, range four east; lot three, section five,

township fifteen north, range four east; lot two, section six, township fifteen north, range four east; lot one of section six, township fifteen north, range four east; east half of southeast quarter, southwest quarter of southeast quarter, section thirty-one, the south half of southeast quarter of section thirty-two, all in township sixteen north, range four east; the southwest quarter of section twenty-eight, township sixteen north, range four east; southeast quarter of northeast quarter, section thirty-one; the southwest quarter of section thirty-two, township sixteen north, range four east; southeast quarter, east half of northeast quarter, section twenty-six, township thirteen north, range three east, lot one, southeast quarter of northeast quarter of section two, and west half of southwest quarter section one, township twelve north, range three east; north half of northeast quarter, section twenty-nine; northeast quarter of southeast quarter, section thirty-one; [4] west half of southwest quarter, and southeast quarter of southwest quarter, section thirty-two, township fifteen north, range four east; south half of southeast quarter, south half of southwest quarter, northwest quarter of southwest quarter, section five, township fifteen north, range four east; southeast quarter of northwest quarter, section seven, township thirteen north, range five east. The whole hereof being in Boise meridian.

VIII.

That Joseph C. Campbell is a citizen and resident of City and County of San Francisco, State of California; that he is an attorney and counsellor at law,

and is now practicing law, and for more than twenty years last past has, continuously so practiced, in the courts of said State, and of the United States, and having an office and his principal place of business in said City and County of San Francisco; that Patrick Reddy died on or about the 26th day of June, 1900; that said Patrick Reddy was for many years just prior to, and until his death, the law partner of said Joseph C. Campbell, having an office at the place aforesaid and practicing before the aforesaid courts; that said Reddy and said Campbell, during all of said last-mentioned time, together with one William H. Metson, practiced law under the firm name and style of Reddy, Campbell & Metson; that since the death of said Reddy, said Campbell has continued such practice, as a partner of said Metson and others, under the firm name and style of Campbell, Metson & Campbell.

That said Patrick Reddy was a near relative by marriage of complainant's said husband, and was, also, during their joint lives, an owner, as tenant in common, of a one-half undivided interest, together with complainant's said husband, who owned a like interest therein, of the certain lands, called "base lands" [5] hereinafter mentioned; that said Reddy and said Campbell and said firm of Reddy, Campbell & Metson, were complainant's husband's attorneys and solicitors during his lifetime, and that Reddy acquired his said one-half interest in said "base lands" from complainant's said husband, as a fee for legal services; that after the death of complainant's husband and of said Reddy, said Joseph

C. Campbell, and said firm of Campbell, Metson & Campbell, acted as complainant's attorneys, solicitors and advisers, continuously, up to, and until long after the month of August, 1900, and said Campbell, during said last-mentioned time was complainant's family solicitor and legal adviser.

IX.

Said lands, known as and called herein, "base lands," were situated in the State of California, and prior to the month of June, in the year 1900, had been duly covered by and included within, and were then still covered by and included within a public forest reservation, under the laws of the United States; that during said year 1900, and in the month of August of that year, complainant was the owner in fee of that certain undivided one-half interest therein that had formerly been owned by complainant's husband, as in paragraph VIII aforesaid, and was then entitled to the possession of said lands; that at said last-mentioned time said Patrick Reddy was dead; that he died testate, and that his estate was then regularly in process of administration in the Superior Court of the City and County of San Francisco, State of California, sitting as a Court of Probate, and Emily M. Reddy and Edward A. Reddy were then the duly appointed, qualified and acting administratrix with the will annexed, and administrator with the will annexed, of said estate of Patrick Reddy, deceased; that said "base lands" are situated in the State of California and are described as follows, to wit: [6]

The SE. $\frac{1}{2}$ of NE. $\frac{1}{4}$, S. $\frac{1}{2}$ of NW. $\frac{1}{4}$; N. $\frac{1}{2}$ of

SW. $\frac{1}{4}$ and NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 11, in township 20 south, range 34 east, M. D. M.; the NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ (or lot 4) of section 6, in township 19 south, range 35 E., M. D. M., aggregating 323.13 acres in the County of Tulare, State of California.

2. The E. $\frac{1}{2}$ of SW. $\frac{1}{4}$; N. $\frac{1}{2}$ of SE. $\frac{1}{4}$, and SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 3; E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 15; S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 21, in township 20 south, range 35 east; SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of section 3; E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of section 10 in township 21 south, range 34 east; east $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 9 in township 21 south, range 35 east; SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$, and N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of section 32 in township 22 south, range 35 east, Mount Diablo meridian, containing 800 acres in the County of Tulare, State of California.

3. The NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 31; N. $\frac{1}{2}$ of SW. $\frac{1}{4}$; NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of section 32 in township 17 south, range 35 east; SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 6; E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ (or lot 2) of section 7; E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$; NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of section 23; NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ and NE. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 24 in township 18 south, range 34 east; E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 25 in township 19 south, range 34 east, Mount Diablo meridian, containing 760.79 acres in the County of Tulare, State of California.

4. The southwest quarter of northwest quarter; west half of southeast quarter, and the southeast quarter of southeast quarter of section twenty-six

(26), township 20 south, range 35 east, M. D. M., containing 160 acres in the County of Tulare, State of California. [7]

5. The west half of southeast quarter and southwest quarter of section fourteen (14) in township eighteen (18) south, range thirty-four (34) east; also the east half of northeast quarter and north half of southeast quarter of section sixteen (16) in township eighteen (18) south, range thirty-four (34) east; also the south half of northwest quarter and southwest quarter of section fourteen (14) in township twenty (20) south, range thirty-five (35) east, Mount Diablo meridian, containing six hundred and forty (640) acres in the County of Tulare, State of California.

6. The southeast quarter of northwest quarter of section three (3); the southwest quarter of northeast quarter of section three (3); the northeast quarter of northwest quarter (or lot 31) of section (3). The southwest quarter of northeast quarter of section (4) and the southwest quarter of southeast quarter of southeast quarter of section fifteen (15), all in township twenty (20) south, range thirty-five (35) east, Mount Diablo meridian, containing two hundred and two-hundredths (200.02) acres in the County of Tulare, State of California.

7. The north half of southwest quarter, southeast quarter of southwest quarter and southwest quarter of southeast quarter of section twenty-three (23) in township twenty (20) south, range thirty-five (35) east, Mount Diablo meridian, containing one hundred and sixty (160) acres in the County of Tulare,

State of California.

8. The NW. $\frac{1}{4}$ of section 23; E. $\frac{1}{2}$ of sec. 10; E. $\frac{1}{2}$ of NW. $\frac{1}{4}$, and SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of sec. 22; NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 15; NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of sec. 3, and NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 26 in T. 20 S., R. 35 E.; S. $\frac{1}{2}$ of SW. $\frac{1}{4}$, S. $\frac{1}{2}$ of SE. $\frac{1}{4}$, and NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of sec. 14; W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of sec. 23 in T. 17 [8] S., R. 34 E.; SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 32, and NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of sec. 15; S. $\frac{1}{2}$ of NW. $\frac{1}{4}$; SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 33; N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 34, in T. 17 S., R. 35 E.; SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of sec. 29; NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of sec. 30, in T. 18 S., R. 35 E.; W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of sec. 34 in T. 18 S., R. 34 E., Mount Diablo meridian, containing 1560.00 acres in the County of Tulare, State of California.

9. The north half of northeast quarter of section nine (9); southwest quarter of northwest quarter and north half of southwest quarter of section fifteen (15), southeast quarter, southeast quarter of northeast quarter; northwest quarter of northeast quarter and northeast quarter of northwest quarter of section sixteen (16); north half of northeast quarter, and east half of northwest quarter of section twenty-two (22), township seventeen (17) south, range thirty-five (35) east, Mount Diablo meridian, in the County of Inyo, State of California.

10. The S. $\frac{1}{2}$ of SE. $\frac{1}{4}$; NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$; S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of sec. 14, tp. 17 S., R. 34 E.; SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of sec. 13, tp. 18 S., R. 34 E.; and SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of sec. 10, tp. 20 S., R. 35

E., Mt. Diablo meridian.

That complainant was then and there the owner in fee, by like title and right, also, of the other base lands situated in the said State of California, and hereinafter referred to, but not described.

X.

That during the year 1900, John A. Benson, hereinafter mentioned, was, and for many years immediately preceding said last-mentioned year continuously had been, a client, and also the intimate personal friend of said Joseph C. Campbell; that [9] said Benson for many years last past has been, and still is, thoroughly learned in the laws of the United States respecting the acquisition, purchase and sale of its public lands, and during all of said last-mentioned time has been engaged as a business in the location, purchase, manipulation and sale of such lands, in the State of California, Idaho, and elsewhere in the states west of the Mississippi River.

XI.

Complainant is informed and believes, and therefore alleges, that during the month of August, 1900, said Joseph C. Campbell, John A. Benson, defendant R. M. Cobban, defendant E B. Weirick, and certain promoting stockholders of the thereafter incorporated company, to wit, the Payette Lumber and Manufacturing Company, one of which said promoting stockholders was one Henry Turrish, Vice-president of said Payette Lumber and Manufacturing Company, and other persons whose names are unknown to this plaintiff, did wrongfully and unlawfully agree, and did conspire and confederate to-

gether, by means of artifice and deceit, to induce complainant to surrender said "base lands" to the United States, and to select, under the laws of the United States in that behalf made and provided, other lands (herein called "lieu lands"), in lieu of said "base lands," and to cheat and defraud complainant out of such "lieu lands" when such "lieu lands" should have been so selected, and the heretofore named persons did conspire to cheat and defraud complainant out of the title, right of possession and possession and proceeds thereof, and to sell said "lieu lands" to themselves, and unlawfully to deprive complainant of the use, possession and enjoyment of said "lieu lands" and of the proceeds thereof, and to convert the same to their own use.

In this behalf complainant alleges that during the [10] month of August, 1900, in the office of, and in the presence and hearing of, said Joseph C. Campbell, in said City and County of San Francisco, it was orally agreed between said John A. Benson in his own behalf, and said complainant, and said Emily M. Reddy, as administratrix of the estate of said Patrick Reddy, deceased, through their attorney said Joseph C. Campbell, that said Benson should purchase, and said complainant and said estate should sell, to him the "base lands" hereinbefore in paragraph IX mentioned; that said Benson should pay therefor the sum of four dollars per acre, that deeds therefor, from said complainant and the administratrix and administrator of said estate to said John A. Benson should be made and placed in escrow, to be taken out of the escrow-holder's hands by said

Benson as he paid for the said lands, and that said Benson should pay therefor and complete payment for all of said “base lands,” and take all of said deeds out of escrow within ninety days thereafter.

That said John A. Benson then and there agreed to pay complainant and said representatives of said estate of Patrick Reddy, deceased, four dollars per acre for said “base lands”; that said Joseph C. Campbell then and there, and also theretofore, represented to complainant that said Benson was reliable and trustworthy and fully able to carry out his said promise.

That said negotiations for the sale to said Benson of said “base lands” were conducted by said Joseph C. Campbell on behalf of complainant and of said estate of Patrick Reddy, deceased, and for the said administrator and administratrix, on the one side, and by said John A. Benson, on the other, complainant then and there being present and assenting to said negotiation under his direction.

That at said last-mentioned meeting in August, 1900, at the office of said J. C. Campbell, it was suggested to said Benson, [11] on behalf of complainant, in the presence and hearing of said Campbell, that said deeds of said “base lands” should be drawn by said Benson, without expense to complainant or to said Reddy Estate, and when executed, that the same should be placed in escrow, paid for and taken out by said Benson as aforesaid, and that said Campbell and said Benson then and there agreed thereto.

XII.

That complainant then and there, and until long

afterward had implicit confidence in said Joseph C. Campbell and in his advice and counsel, and did also believe and rely upon the promise of said John A. Benson to draw deeds of said base lands in accordance with his aforesaid promise and agreement, and did also believe and rely upon the promise of said Benson to pay therefor said sum of four dollars per acre and to complete said payment, and to place said deeds in escrow and to take said deeds out of escrow within ninety days thereafter, and did rely upon said Joseph C. Campbell to see to it that said deeds were drawn as aforesaid and were placed in escrow as aforesaid and to protect the interests of complainant in said transaction, as it was his duty to do; and did also rely upon said representations of said Campbell that said Benson was then a reliable and trustworthy man and able to carry out his said promise, and did believe said Benson to be a reliable and trustworthy man and able to carry out his said promise.

XIII.

That, as complainant is informed and believes, and therefore alleges, the said Benson was not then reliable or trustworthy or able to carry out his said promise, and that he did not then or ever intend to draw said or any deeds of said "base lands," so as in paragraph XI aforesaid, nor to place said, or any, deeds in escrow, so as aforesaid, and said Campbell did [12] not then or ever intend to see that said or any deeds were so drawn or placed in escrow; and complainant alleges that said Benson did not then or ever draw or cause to be drawn said or any deeds of

said base lands conveying or purporting to convey said lands from complainant and said representatives of said Reddy Estate to said Benson, and, also, that said Campbell and said Benson, or either of them, did not then or ever place, or cause to be placed, said deeds, or any thereof, in escrow, so as aforesaid, and also that said Campbell did not see to it on behalf of complainant that said deeds were drawn in accordance with said agreement or placed in escrow, and that he did not in any way protect or endeavor to protect the interests of complainant in said base lands at all; that, on the contrary, said Benson soon after said agreement of August, 1900, did draw deeds purporting to convey said base lands from complainant and said representatives of said estate of Reddy to the United States of America; that said Benson then delivered said last-mentioned prepared deeds to said Campbell; that said Campbell, wrongfully and fraudulently, and in furtherance of said conspiracy, did then represent to complainant that said deeds prepared by said Benson, so as last aforesaid, were in fact deeds conveying said base lands from complainant and her said cotenant to said Benson, and did send said last-mentioned prepared deeds to complainant for her signature; that complainant, then and there believing said representations and promises of said Benson and Campbell, and relying solely thereon, did then place her signatures at the bottom of said last-mentioned deeds and did then immediately thereafter return the same to said Joseph C. Campbell; that said Campbell, not regarding his duty to complainant, and contrary to his repre-

sentations and promises, did immediately thereafter deliver the said last-mentioned deeds to said Benson, who immediately [13] caused the same to be placed on record in the respective counties in which the lands were situated, namely, in the records and in the Recorder's office of Tulare County at Visalia, California, and in the office of the Recorder and in the records of the County of Inyo, at Independence, California.

XIV.

That at the time complainant received said last-mentioned deeds from said Campbell for signature, said Campbell also sent therewith, for complainant's signature, papers which he represented to complainant to be like deeds to other base lands in the State of California, which complainant and said Reddy Estate owned as cotenants aforesaid, and at said time, and in like manner aforesaid, had agreed to sell to said Benson; that the papers so sent by said Campbell for complainant's signature made many documents, so that complainant was required, in order to comply with said Campbell's request, to sign her names many times; that complainant did not examine the papers that she then signed; that, on the contrary, complainant, solely believing in and relying upon the representations and promises of said Benson and Campbell, and trusting said Campbell wholly and implicitly, signed all of the papers then sent to her by him, as aforesaid, without examination, believing them deeds that had been prepared by said Benson in accordance with his said oral agreement and that had been examined and approved by said

Campbell for complainant, and complainant returned said papers, when so signed by her, to said Campbell, believing that he would place or cause the same to be placed in escrow and would wholly protect her interests in the business.

XV.

Complainant is informed and believes, and, therefore alleges, that among the papers so prepared by said Benson and [14] sent to her by said Campbell and signed by her, believing them to be deeds, as in paragraphs XIII and XIV aforesaid alleged, were papers, purporting to be applications to select lieu lands in place of said base lands, and papers purporting to be powers of attorney (which subsequently turned out to be the alleged powers of attorney hereinafter in paragraph XVII mentioned), which were in blank; and that said powers of attorney did not, at the time complainant signed the same, contain the name of any person as attorney in fact, or any date or dates; and that the name of R. M. Cobban, defendant, and said dates were inserted in said power of attorney after complainant signed the same by some person unknown to complainant, and wholly without complainant's knowledge or consent; that said Benson and said Campbell, well knowing that complainant trusted them and believed that they would carry out said agreement with and for her, and well knowing that complainant would sign any papers that said Campbell sent to her for that purpose without questioning or examining the same, surreptitiously, and in furtherance of said conspiracy and scheme to defraud, inserted said powers of

attorney among the deeds that said Campbell sent to complainant for her signature, as aforesaid.

XVI.

That neither said Campbell nor said Benson nor any other person ever *inform* complainant that she had signed deeds to said “base lands” in paragraph IX mentioned, conveying to the United States, or any “lieu lands” selections whatever in paragraph VII mentioned, and that complainant remained in total ignorance thereof, all the time believing that the deeds she had signed conveyed said “base lands” to said Benson, and had been placed in escrow, and that said lands were being paid for by said Benson as he took said deeds out of escrow until the month [15] of July, 1901, at which time complainant discovered that deeds were on record, purporting to convey said “base lands” to the United States in the office of the Recorder of Tulare County, at Visalia, California; that between the month of September, 1900, and the month of August, 1901, said Campbell paid to complainant in two separate payments and at different times the sum of twenty-seven hundred and fifty dollars, and stating that the same came from said Benson, without informing complainant that said deeds to the United States, or said lieu land selections, or that said powers of attorney were in existence, and when this complainant was wholly ignorant thereof, and said Campbell has, at all times, failed to inform complainant of the existence of any powers of attorney. That, upon the discovery of the recording of said deeds to the United States, in and to said “base lands” and of the existence of said

selections of "lieu lands," this complainant immediately thereafter went to the said Joseph C. Campbell and told him that she had found that said deeds had been placed of record and said lieu land selections filed, and asked him what it meant, stating then and there, to said Campbell, that she understood that the deeds she had made were in escrow; that said Campbell then and there stated and represented to complainant that it was all right, that deeds had been placed in escrow and were still there, and that if complainant was not satisfied, she could take the matter out of said Benson's hands at any time; that complainant then trusted said Campbell implicitly and believed that he spoke the truth, and for that reason refrained from prosecuting her inquiries further, also for the further reason that, about that time, she ascertained that said lieu land selections [16] were in her own name and purported to be made by her in person (together with said Emily M. Reddy and Edward A. Reddy as representatives of Patrick Reddy, deceased), and that when patents to said lieu lands should be issued the same would be issued in her name and in the name of said representatives, as cotenants; that thereafter and during the year 1902 said Joseph C. Campbell again represented to complainant that she, or her son Norman E. Conklin, for her, could take the aforesaid matter of the sale of said lands to said Benson away from said Benson at any time, if she so desired; that complainant even then believed and relied upon said statements and refrained from inquiring further; that said statements so made to complainant by said Campbell to

the effect that it was all right, that said deeds were still in escrow, and that, if she was not satisfied, she could take the matter of said lands away from said Benson at any time, were unqualifiedly and wholly untrue, in that, at the time said Campbell made said statements to complainant, said alleged powers of attorney hereinafter in paragraph XVII mentioned, had been placed of record in the Recorder's office of Boise County, at Idaho City, State of Idaho, in the records of Boise County, Idaho, and that said Campbell willfully made all of said false representations and statements to complainant and her agents in furtherance of the said conspiracy, and for the purpose of lulling to rest the inquiries and suspicions of complainant.

XVII.

That said alleged powers of attorney, in paragraphs XV and XVI before mentioned, are described as follows, to wit:

KNOW ALL MEN BY THESE PRESENTS: That whereas by an act of Congress approved June 4, 1897 (30 Stat. 36) it is provided,

That in cases in which a tract covered by a patent, is included within the limits of a public forest reservation the [17] owners thereof, may if he desires to do so relinquish the tract to the government and may select in lieu thereof a tract of vacant land open to settlement, etc.

And whereas on the nineteenth day of September, 1900, we, Mollie Conklin (a widow) of Bakersfield, County of Kern, State of California, and Edward A. Reddy and Emily M. Reddy, administrator and ad-

ministratrix of the estate of Patrick Reddy, deceased, both of the City and County of San Francisco, said State were the owners of the following described land,

The E. $\frac{1}{2}$ of SW. $\frac{1}{4}$, N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ and SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 3, E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 15, S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 21 in township 20 S., range 35 east, SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of section 3 E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of section 10 in township 21 south, range 34 east, east $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 9 in township 21 south, range 35 east, SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ and N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of section 32 in township 22 south, range 35 east, Mount Diablo meridian, containing 800 acres in the County of Tulare, State of California, which said tract, prior to said date had been included within the limits of the Sierra Forest Reservation.

And whereas, on the said last-named day we surrendered the said land to the United States by deed of conveyance duly executed, by which we became entitled to select other lands of equal acreage in lieu thereof:

Now, therefore, we have made, constituted and appointed and by these presents do make, constitute and appoint, R. M. Cobban of Missoula in the County of Missoula, State of Montana, our true and lawful attorney for us and in our names, place and stead to enter into and take possession of each and every tract of public [18] land in any state or territory of the United States, that has been or may hereafter be selected by us in lieu of the land surrendered to the United States as aforesaid or any portion

thereof whether the said selection or selections be made by us personally or by someone else acting through power of attorney from us.

Our said attorney in fact is also hereby authorized and empowered to grant, bargain, sell and convey by good and sufficient deed all of the right, title and interest that we now own, hold or possess and also all of the right, title and interest that we may hereafter acquire, of, in and to the land that has been or may hereafter be selected as aforesaid or any part thereof for such sum or price as he may deem proper.

And for all or any of the powers and purposes aforesaid for us and in our names to make, execute, acknowledge and deliver all necessary deeds, conveyances, assignments or other instruments of whatever kind or nature.

Giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney or his substitutes or substitute shall lawfully do or cause to be done by virtue hereof.

For value received, the receipt whereof is hereby acknowledged, this power of attorney is hereby made and declared to be irrevocable by us or otherwise.

In witness whereof we have hereunto set our hands and seals in the first day of March, nineteen

hundred and one. [19]

MOLLIE CONKLIN. [Seal]

EDWARD A. REDDY, [Seal]

Administrator of the Estate of Patrick Reddy, Deceased.

EMILY M. REDDY, [Seal]

Administratrix of the Estate of Patrick Reddy, Deceased.

25¢ I. R. S. M. C.

E. A. R. E.

M. R.

Mar. 1st, 1901.

Signed, sealed and delivered in the presence of

C. E. GLOVER.

J. H. LARENSON.

State of California,

County of San Francisco,—ss.

On this first day of March, one thousand nine hundred and one, before me, George A. Young, a notary public in and for the said City and County of San Francisco, personally appeared Mollie Conklin and Edward A. Reddy, administrator of the estate of Patrick Reddy, deceased, and Emily M. Reddy, administratrix of the estate of Patrick Reddy, deceased, personally known to me to be the same persons whose names are subscribed to the within instrument and they severally duly acknowledge to me that they executed the same, and the said Edward A. Reddy and Emily M. Reddy further acknowledged they executed the said instrument respectively as administrator and administratrix.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my seal the day and year first above written.

[Seal]

GEORGE A. YOUNG,

Notary Public in and for the City and County of San Francisco, State of California.

—and the above instrument is recorded in the records and in the County Recorder's office of the County of Boise, at Idaho City, in the State of Idaho, in Book of Powers of Attorney, Number Two, [20] at page 338.

Also an alleged instrument of like tenor and wording, wherein it purports to have been executed by Mollie Conklin, Edward A. Reddy, Administrator of the estate of Patrick Reddy, deceased, and Emily M. Reddy, administratrix of the estate of Patrick Reddy, deceased, on the 27th day of September, 1900, wherein one R. M. Cobban, who is the defendant mentioned herein, is named as attorney in fact, and purporting, also, to have been acknowledged on the 27th day of September, one thousand nine hundred, before one Holland Smith, a notary public, in and for the City and County of San Francisco, State of California, in said City and County of San Francisco, and bearing the signature and official seal of said notary public, and which is written in the records of the said County of Boise, Idaho, in Book of Powers of Attorney, Number two at page 305.

Also an alleged instrument of like tenor and wording, wherein it purports to have been executed by Mollie Conklin, Edward A. Reddy, administrator of the Estate of Patrick Reddy, deceased, and Emily M. Reddy, administratrix of the estate of Patrick

Reddy, deceased, on the first day of March, 1901, wherein one R. M. Cobban, who is a defendant herein, is named as attorney in fact, purporting to have been acknowledged before one George A. Young, a notary public in and for the City and County of San Francisco, State of California, in said City and County of San Francisco, on the first day of March, 1901, and bearing the signature and official seal of said notary public, and which is written in the records of said County of Boise, Idaho, in Book of Powers of Attorney, Number two, at page 342.

Also an alleged instrument of like tenor and wording, wherein it purports to have been executed by Mollie Conklin, [21] Edward A. Reddy, administrator of the Estate of Patrick Reddy, deceased, and Emily M. Reddy, administratrix of the Estate of Patrick Reddy, deceased, on the twenty-sixth day of September, 1901, wherein one R. M. Cobban, who is a defendant herein, is named as attorney in fact, purporting also to have been acknowledged before one Holland Smith, a notary public in and for the City and County of San Francisco, in the City and County of San Francisco, on the twenty-sixth day of September, 1900, and bearing the official seal of said Notary, and which is written in the records of Boise County, Idaho, in Book of Powers of Attorney Number two at page 351.

Also an alleged instrument of like tenor and wording, wherein it purports to have been executed by Mollie Conklin, Edward A. Reddy, administrator of the Estate of Patrick Reddy, deceased, and Emily M. Reddy, administratrix of the Estate of Patrick

Reddy, deceased, on the 13th day of February, 1901, wherein one R. M. Cobban, who is a defendant herein, is named as attorney in fact purporting, also, to have been acknowledged before one George A. Young, a notary public in and for the City and County of San Francisco, California, in said City and County, on the 12th day of February, 1901, and bearing the signature and official seal of said notary public, and which is written in the records of said Boise County, Idaho, in Book of Powers of Attorney, Number two, at page 353.

Also an alleged instrument of like tenor and wording, wherein it purports to have been executed by Mollie Conklin, Edward A. Reddy, administrator of the Estate of Patrick Reddy, deceased, and Emily M. Reddy, administrator of the Estate of Patrick Reddy, deceased, on the 3d day of April, 1901, wherein [22] one R. M. Cobban, who is a defendant herein, is named as attorney in fact, purporting also to have been acknowledged before Thomas S. Burnes, a notary public in and for the City and County of San Francisco, California, on the 3d day of April, 1901, and bearing the signature and official seal of said notary public, and which is written in the records of said Boise County, Idaho, in Book of Powers of Attorneys, Number two, at page 355.

Also an alleged instrument of like tenor and wording, wherein it purports to have been executed by Mollie Conklin, Edward A. Reddy, administrator of the Estate of Patrick Reddy, deceased, and Emily M. Reddy, administratrix of the Estate of Patrick Reddy, deceased, on the 26th day of September, 1900,

wherein R. M. Cobban, who is a defendant herein, is named as attorney in fact purporting also to have been acknowledged before Holland Smith, a notary public in and for the City and County of San Francisco, California, in said City and County, on the 26th day of September, 1900, and bearing the signature and official seal of said notary, and which is written in the records of said Boise County, Idaho, in Book of Powers of Attorney, Number two, page 349.

Also an alleged instrument of like tenor and wording, wherein it purports to have been executed by Mollie Conklin, Edward A. Reddy, administrator of the Estate of Patrick Reddy, deceased, and Emily M. Reddy, administratrix of the Estate of Patrick Reddy, deceased, on the 28th day of February, 1901, wherein one R. M. Cobban, who is a defendant herein, is named as attorney in fact, purporting also to have been acknowledged before Thomas S. Burnes, a notary public, in and for the City and County of San Francisco, California, in said City and County, on [23] the 28th day of February, 1901, and bearing the signature and official seal of said notary public, and which is written in the records of said Boise County, Idaho, in Book of Powers of Attorney Number two, at page 384.

Also an alleged instrument of like tenor and wording, wherein it purports to have been executed by Mollie Conklin, and Emily M. Reddy, administratrix of the Estate of Patrick Reddy, deceased, on the 28th day of June, 1901, wherein one R. M. Cobban, who is a defendant herein, is named as attorney in

fact, purporting to have been acknowledged before Thomas S. Burnes, a notary public in and for the City and County of San Francisco, California, in said City and County, on the 28th day of June, 1901, and bearing the signature and official seal of said notary public and which is written in the records of said Boise County, Idaho, in Book of Powers of Attorney, Number two, at page 386.

Also an alleged instrument, wherein it purports to have been executed by Mollie Conklin, and Emily M. Reddy, as sole administratrix of the Estate of Patrick Reddy, deceased, on the 16th day of September, 1901, wherein one R. M. Cobban, who is a defendant herein, is named as attorney in fact, purporting also to have been acknowledged before Thomas S. Burnes, a notary public in and for the City and County of San Francisco, California, in said City and County, on the 16th day of September, 1901, and bearing the signature and official seal of said notary, and which is written in the records of said Boise County, Idaho, in Book of Powers of Attorney, Number three, at page 31.

XVIII.

That complainant does not know, and never did know, and never has seen or spoken to said R. M. Cobban, never did have any faith, trust or confidence in him, never received anything of value by way of consideration, or otherwise, from him, or from [24] anyone on his behalf, and never did knowingly sign, or authorize any person for her to sign, said alleged powers of attorney in paragraph XVII mentioned, or any of them; that complainant never knowingly,

or consenting, thereto gave a power or powers of attorney, revocable, or irrevocable, or at all, to said R. M. Cobban, or to any other person or persons, whatever to sell, or to transfer or to dispose of, or to exchange, or otherwise to deal in or deal with, said lieu lands, or any thereof; that said alleged powers of attorney were and are wholly without consideration; that complainant never acknowledged said alleged powers of attorney, or any of them, never appeared, in person, or by proxy, or otherwise, or at all, before the notaries public, or any of them, who appear, in said certificates of acknowledgments purporting to be annexed to said alleged powers of attorney, to have taken her acknowledgment thereto, and never authorized any other person so to appear for her; that said writings, purporting to be certificates of acknowledgments of said alleged powers, and purporting to be signed by the notaries therein named, are, and each of said certificates is, wholly and unqualifiedly and absolutely false and untrue; that they were, and each of them was, made wholly without complainant's knowledge or consent and that said alleged powers of attorney are false and forged.

XIX.

That no administration upon any estate of said Patrick Reddy, deceased, was ever had in the State of Idaho, which the said Joseph C. Campbell, John A. Benson, and defendants, R. M. Cobban, E. B. Weirick, Henry Turrish, said unknown promoting stockholders and Payette Lumber & Manufacturing Company, well knew at all the times herein men-

tioned; and they and each of them, at all of said times, also well knew, and it is a fact, that neither said Emily M. Reddy, as administratrix, and said Edward A. Reddy, as [25] administrator, to appear, in said alleged powers to have executed the same, ever had any power or authority whatever, to make said alleged powers of attorney, or any of them, or to appoint said R. M. Cobban, or any other person, or persons, their, or either of their attorneys, or attorney in fact, in their representative capacity aforesaid, to sell, exchange, transfer, or dispose of or deal with said lieu land, or any part or interest therein, or for any other purpose whatever.

XXI.

That, on the 21st day of September, 1901, said R. M. Cobban, made, executed, acknowledged and delivered a writing wherein he, as alleged attorney in fact for complainant, and, also for said Edward A. Reddy, as administrator, and said Emily M. Reddy, as administratrix of said Estate of Patrick Reddy, deceased, purported to grant and convey a portion of said lieu lands, in paragraph VII mentioned, and which lands are described in the following alleged conveyance to defendant E. B. Weirick, as trustee; that said alleged conveyance, and the certificate of acknowledgment thereof, are in words and figures as follows:

THIS INDENTURE made the 21st day of September in the year of our Lord one thousand nine hundred and one, between Mollie Conklin, a widow, of Bakersfield, County of Kern, State of California, and Edward A. Reddy administrator, and Emily M.

Reddy, administratrix of the Estate of Patrick Reddy, deceased, both of the City and County of San Francisco, State of California, by their attorney in fact, R. M. Cobban, of Missoula, County of Missoula, State of Montana the parties of the first part, and E. B. Weirick, trustee, of Butte, County of Silver Bow, State of Montana, the party of the second part.

WITNESSETH; That the said parties of the first part for and in consideration of the sum of one dollar (\$1.00) lawful money [26] of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part and to their heirs and assigns forever, all the following described real estate, situate in the County of Boise, State of Idaho, to wit: NE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and lot 4 of sec. 19, tp. 13 N. R. 5 E., and lot 11, sec. 2, tp. 11 N., R. 3 E.; NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of sec. 26, N. $\frac{1}{2}$ of NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, the northwest $\frac{1}{4}$, N. $\frac{1}{2}$ of SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of sec. 17, the NW. $\frac{1}{4}$, the N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of sec. 35, tp. 16 N., R. 4 E., SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 29, E. $\frac{1}{4}$ of NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ of sec. 31, tp. 16 N., R. 5 E., NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of sec. 7, tp. 13 N., R. 5 E., and the NW. $\frac{1}{4}$ of sec. 25, tp. 16 N., R., 4 E., Boise meridian.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion

and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property as well in law as in equity of the said parties of the first part.

To have and to hold all and singular the above mentioned and described premises together with the appurtenances unto the party of the second part and to his heirs and assigns forever, and the said parties of the first part and their heirs the said premises in the quiet and peaceable possession of the said party of the *second* his heirs and assigns, against the said parties of the first part and their heirs, and against all and every person [27] and persons whomsoever lawfully claiming, or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

MOLLIE CONKLIN. [Seal]

By R. M. COBBAN,
Her Attorney in Fact.

EDWARD A. REDDY, [Seal]

Administrator of the Estate of Patrick Reddy,
Deceased.

By R. M. COBBAN,
His Attorney in Fact.

EMILY M. REDDY, [Seal]

Administratrix of the Estate of Patrick Reddy,
Deceased.

By R. M. COBBAN,
Her Attorney in Fact.

I. R. S. \$2.75.

Sept. 23, 1901.

R. M. C.

Signed, sealed and delivered in the presence of
C. W. WILLETT.

State of Idaho,

County of Boise,—ss.

On this 23d day of September, 1901, before me, John M. Haines, a Notary Public in and for the said county, personally appeared R. M. Cobban, known to me to be the person whose name is subscribed to the within instrument, as the attorney in fact of Mollie Conklin and Edward A. Reddy, administrator, and Emily M. Reddy, administratrix of the Estate of Patrick Reddy, deceased, and acknowledged to me that he subscribed the name of Mollie Conklin, Edward A. Reddy and Emily M. Reddy as principals and his own name as attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

JOHN M. HAINES,

Notary Public. [28]

—that said alleged conveyance and certificate of acknowledgment were by said Cobban filed for record in the office of the Recorder of Boise County, Idaho, on the 30th day of September, 1901, and were written in the records of said office in Book of Deeds, Records No. 22, at page 45, and still so remain written in said book.

XXII.

That thereafter, and during the year 1902, said

lieu lands were patented by the United States to complainant, Mollie Conklin, and said Emily M. Reddy, administratrix, and Edward A. Reddy, administrator; that at the time said alleged conveyance by said Cobban, purporting to be made by him as attorney in fact for complainant and said representatives of Patrick Reddy, deceased, was made and acknowledged by said Cobban and placed on the records of said Boise County, Idaho, so as aforesaid, neither complainant, nor said representatives, nor said Cobban had any title whatever to said lieu lands, and neither of them had more than an equity therein, as said Joseph C. Campbell, John A. Benson, R. M. Cobban, Henry Turrish, said unknown promoting stockholders, and E. B. Weirick, then and there well knew.

XXIII.

That, as complainant is informed and believes, and therefore alleges, said Cobban and said Weirick were mere agents and dummies of said Benson, Henry Turrish and said unknown promoting stockholders, and acting as, and were used as mere tools by said Benson, said Turrish and said promoting stockholders, and said Cobban and Weirick were used as a conduit by means whereof to effect the alleged transfer of said lieu lands to said Lumber Company, thereafter to be organized, on the one hand, and of the proceeds thereof to said Benson, on the other hand, in and about the business of said alleged conveyance of said lands by said Cobban [29] to said Weirick, trustee, and that said transaction was in substance and effect a deal between, and for the benefit of, said

Benson and said Payette Lumber and Manufacturing Company, to be thereafter organized; and that the said Payette Lumber and Manufacturing Company, thereafter to be organized, was the real party for whom said Weirick was acting as trustee, as aforesaid, and which Company was the purported beneficiary thereunder; and that said Cobban, said Henry Turrish, who was a promoting stockholder, and said unknown promoting stockholders of said company were but acting for and on behalf of said Payette Lumber and Manufacturing Company, beneficiary as aforesaid.

XXIV.

That complainant did not know that said alleged powers of attorney, or any of them, were in existence, or that said alleged conveyance to said Weirick, trustee, aforesaid, was in existence prior to the first day of January 1903; that complainant, immediately thereafter, and prior to the first day of May, 1903, repudiated said alleged powers of attorney and said conveyance; that the total number of acres of "base lands" which plaintiff made a verbal agreement, as aforesaid, to sell to said Benson was nine thousand six hundred (9,600); that plaintiff has received the sum of Two Thousand Seven Hundred and Fifty Dollars (\$2,750) in two payments, at the office of said Campbell, and which, she was informed and believed, were made for deeds which had been taken out of the agreed escrow; that complainant is ready, able, and willing to restore to said Benson and said Campbell everything of value that she has received from them, or either of them;

that she has not done so, or offered to do so, because said Campbell and said Benson have, by their acts herein [30] related, placed it beyond their power, or the power of either of them, to restore to complainant the position that she occupied in relation to said lands and to the title thereof prior to the said alleged conveyance of said lieu lands to said Weirick trustee; that she does not make such offer now, because it is still impossible for them, or either of them to do so, and, also, because neither said Campbell nor said Benson are indispensable parties to this action, and are not made parties, and to make them such would oust the jurisdiction, and also, because their rights, if they, or either of them have any, against complainant or to said lieu lands will not be affected by any decree or order herein.

That complainant has never received anything of value from any of the defendants in this action.

XXV.

That defendants, R. M. Cobban, E. B. Weirick, individually and, also, as trustee, Payette Lumber and Manufacturing Company, John Doe, Mary Doe, Richard Roe and Thomas Roe, and each of them, unjustly claim an interest or estate adverse to complainant in said lieu lands, in paragraph VII herein mentioned that none of said defendants has any rightful claim, right, title, or interest thereto or therein; on the contrary, that each and all of said claims are utterly without right; that said alleged powers of attorney and alleged conveyance to Weirick trustee, are invalid and fraudulent and forged and constitute a cloud upon complainant's title to

said lieu lands.

XXVI.

All which actings, doings and pretenses of said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of complainant in the premises; and that complainant is remediless in the premises, at and [31] by the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable. To the end, therefore, that justice may be done in the premises, complainant prays that defendants, and each of them, be required to set forth fully the nature of their claims to said real property, herein known as and called lieu lands; that defendants be forever barred and enjoined from all claim to any estate of freehold or of inheritance in said real property, and that complainant be decreed to be the owner thereof and entitled to the possession of the same; for a decree of this court adjudging said powers of attorney and said alleged deed to Weirick, trustee, null and of no effect; for the appointment of a commissioner by the court and that such commissioner be directed to make and execute to complainant a full and complete release, cancellation and annulment of said alleged powers of attorney and that they be declared false and forged and said alleged deed to Weirick, trustee, be cancelled and annulled; for a perpetual injunction restraining said defendants, their, and such of their agents, attorneys, servants and employees, from entering upon or taking possession of said lieu lands, or any part thereof, and

from cutting or removing timber therefrom, and from committing waste thereon, and, in the meantime, for a temporary injunction of like tenor and effect; and, to the end that complainant may obtain the relief to which she is justly entitled, in the premises, she now prays the court to grant her due process of subpoena directed to the said R. M. Cobban, E. B. Weirick, individually, and, also as trustee, Payette Lumber and Manufacturing Company, a corporation John Doe, Mary Doe, Richard Roe, Thomas Roe, defendants hereinbefore named, requiring and commanding each of them to appear herein and answer, but not under oath, the same [32] being expressly waived, the several allegations in this, complainant's bill contained, and if said defendants should not come within the jurisdiction of this court, that such proceedings may be had in regard to them, by publication, or otherwise, to conclude them in the premises as may be authorized by, and be according to the form of the statutes in such case made and provided; and for such other and further relief as may be just and according to equity, according to the nature of the case; and complainant, as in duty bound, will ever pray.

WM. B. DAVIDSON,

N. E. CONKLIN,

Solicitors for Complainant. [33]

State of California,

County of Los Angeles,—ss.

Mollie Conklin, first being duly sworn, deposes and says: That she is the complainant in the above-en-

titled action; that she has read the foregoing Complaint and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated on information and belief, and as to those matters that she believes it to be true.

MOLLIE CONKLIN.

Subscribed and sworn to before me this 6th day of April, A. D. 1908.

[Seal]

P. J. CHRIST,

Notary Public in and for the County of Los Angeles,
State of California.

My Commission expires Sept. 13th, 1910.

Service of copy admitted April 13th, 1908.

CAVANAUGH & BLAKE.

[Endorsed]: Filed April 15, 1908. A. L. Richardson, Clerk. [34]

*In the Circuit Court of the United States for the
District of Idaho, in the Ninth Judicial Circuit,
Central Division.*

IN EQUITY—CONSOLIDATED No. 60.

THE UNITED STATES OF AMERICA and
MOLLIE CONKLIN,

Complainant,

vs.

PAYETTE LUMBER AND MANUFACTURING
COMPANY, a Corporation, et al.,
Defendants.

**Separate Amended Answer of Defendant Payette
Lumber and Manufacturing Company.**

**SEPARATE AMENDED ANSWER OF THE
DEFENDANT PAYETTE LUMBER &
MANUFACTURING COMPANY TO THE
AMENDED BILL OF COMPLAINT OF
COMPLAINANT MOLLIE CONKLIN.**

COMES NOW the above-named defendant, Payette Lumber & Manufacturing Company, a corporation, and for itself only, now and at all times hereafter saving to itself all and all manner of benefits and advantages of exceptions, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in said amended bill of complaint of complainant, Mollie Conklin, contained for amended answer thereto, or so much thereof that this answer defendant is advised it is material or necessary for it to make answer to, says, as follows:

I.

As to whether complainant, Mollie Conklin, is domiciled in and is a resident of the State of California, and of the City and County of San Francisco, in said State of California, and that she was the wife and is the widow of A. R. Conklin, who is dead, this answering defendant has no knowledge or information upon which to base a belief regarding the same and therefore denies the same. [35]

II.

Admits the allegations of paragraphs two, three and four of complainant, Mollie Conklin's amended bill of complaint.

III.

That as to whether John Doe is a citizen of the State of Montana, that the defendant Mary Doe, Richard Roe and Thomas Roe are citizens of the State of Minnesota, and that complainant, Mollie Conklin, does not know and is unable to ascertain the true names of the said defendants, John Doe, Mary Doe, Richard Roe and Thomas Roe, etc., as alleged in paragraph five of complainant Mollie Conklin's amended bill of complaint, this answering defendant has no information or knowledge sufficient to form a belief thereon and denies the same.

IV.

This answering defendant admits that the value of the lands in controversy, herein set forth and described in complainant Mollie Conklin's amended bill of complaint, is largely in excess of \$5,000.00, and admits that the undivided one-half interest in controversy herein between complainant Mollie Conklin and this answering defendant is in excess of \$5,000.00.

V.

This answering defendant denies that complainant Mollie Conklin is the owner in fee as a tenant in common, or otherwise, of an undivided one-half, or any other interest, in the lands set forth and described in paragraph seven of complainant Mollie Conklin's amended bill of complaint, or any part thereof, or that she has any interest whatever therein. Denies that she is entitled to the immediate possession of said lands or the whole or any part thereof, or that she is entitled to the possession of said lands or the whole or any part thereof. Admits that said

lands are not in the possession [36] of the complainant Mollie Conklin, but denies that they are not in the possession of this answering defendant, and alleges the fact to be that said and all of said lands are in the possession of this answering defendant as hereinafter alleged. Admits that said lands are wild and uncultivated timber lands, but denies that they are vacant or unoccupied and not in the possession of any person. Admits that said lands are situated in the State of Idaho, United States of America, County of Boise, in said State, as described in paragraph seven of complainant Mollie Conklin's bill of complaint.

VI.

That as to whether Joseph Campbell is a citizen and resident of the State of California, and that he is an attorney at law, and has been practicing law for more than twenty years last past in the courts of the State of California, and as to all other allegations contained in paragraph eight of complainant Mollie Conklin's amended bill of complaint, this answering defendant has no knowledge or information sufficient to base a belief thereon, and therefore denies each and every of said allegations on that ground.

VII.

This answering defendant admits that the lands described as "base lands" in complainant Mollie Conklin's amended bill of complaint were situated in the State of California, and prior to the month of June, 1900, were covered by and included in a public forest reservation under the laws of the United States, but as to whether complainant Mollie Conk-

lin was the owner in fee of an undivided one-half interest in said "base lands" which have been formerly owned by complainant [37] Mollie Conklin's husband, as alleged in paragraph eight, and was in the year 1900, or at any other time, entitled to the possession of said lands, or any part thereof, or that complainant Mollie Conklin's husband died testate, this answering defendant has no knowledge or information sufficient to base a belief thereon and therefore denies the same. This answering defendant admits that the "base lands" referred to in complainant Mollie Conklin's amended bill of complaint are situated in the State of California, and are described and set forth in paragraph nine of complainant Mollie Conklin's amended bill of complaint, but as to whether complainant Mollie Conklin was, in the year 1900, or at any other time, the owner in fee, or otherwise, of any base lands at all, situated in the State of California, or elsewhere, this answering defendant has no knowledge or information sufficient to base a belief thereon, and therefore denies the same.

VIII.

As to whether during the year 1900 John A. Benson mentioned in paragraph ten of complainant Mollie Conklin's amended bill of complaint was, and for many years immediately preceding the year 1900, continuously, or otherwise, has been a client and intimate personal friend of the said Joseph C. Campbell, and as to the allegations in said paragraph ten of complainant Mollie Conklin's amended bill this answering defendant has no knowledge or information

upon which to base a belief regarding the same and therefore denies the same.

IX.

This answering defendant denies that during the month of August, 1900, or at any other time, that certain [38] or any promoting or any other kind of stockholders of the thereafter incorporated company, to wit, The Payette Lumber & Manufacturing Company, or anyone connected with the Payette Lumber & Manufacturing Company, either as stockholders or otherwise, did wrongfully and unlawfully or wrongfully or unlawfully agree, conspire and confederate together, or agree or conspire or confederate together, or otherwise, by means of artifice and deceit, or artifice or deceit, or otherwise, to induce complainant Mollie Conklin to surrender said or any base lands to the United States, or to select under the laws of the United States, or otherwise, other or any lands called lieu or any other kind of lands, in lieu or otherwise of said base or any other kind of lands, or to cheat and defraud or cheat or defraud complainant Mollie Conklin, or anyone else out of such lieu or any other kind of lands which had been so selected at any other time, or out of the title, right of possession, or proceeds thereof, or any part thereof, or to sell said or any lieu lands to themselves or to anyone else, and unlawfully or otherwise deprive the complainant, Mollie Conklin, of the use, possession and enjoyment, or the use, possession or enjoyment of the said lieu or any other kind of lands, or of the proceeds or any part thereof, or to convert the same or any part of the same to their

own use or to the use of any of them or at all.

As to whether during the month of August, 1900, or at any other time in the office of and in the presence and hearing of the said Joseph C. Campbell, in the City of San Francisco, it was orally agreed between the said [39] John A. Benson on his own behalf, and the said complainant Mollie Conklin, and the said Emily M. Reddy, as administratrix of the Estate of Patrick Reddy, deceased, through their attorney, the said Joseph C. Campbell, that the said Benson should purchase for the said complainant Mollie Conklin and the said administratrix should sell to him the base lands mentioned in paragraph 9 of complainant Mollie Conklin's amended bill of complaint, and as to all the remaining allegations of paragraph 11 of complainant Mollie Conklin's amended bill of complaint, this answering defendant has no knowledge or information upon which to base a belief regarding the same, and therefore denies the same.

As to whether Joseph C. Campbell, John A. Benson, defendant R. M. Cobban, defendant E. B. Weirick, and other persons whose names are unknown, did wrongfully and unlawfully agree and did conspire and confederate together by means of artifice and deceit to induce complainant Mollie Conklin, to surrender base or any other lands to the United States, and to select lands under the laws of the United States, lands in lieu of said base lands, and to cheat and defraud complainant Mollie Conklin out of such lieu or any lands when such lieu or any lands should have been selected, or that said last

named persons did conspire to cheat and defraud said complainant Mollie Conklin out of the title, right of possession, or the proceeds of any part thereof, or to sell said lieu or any lands to themselves and unlawfully or otherwise to deprive complainant Mollie Conklin of the use, possession or enjoyment of said lieu or any lands or the proceeds or any part thereof to their own use or to the use of any of them, this answering defendant has no knowledge or information sufficient to base a [40] belief regarding the same, and therefore denies the same.

X.

As to the allegations of paragraph 12 of complainant Mollie Conklin's amended bill of complaint, this answering defendant has no knowledge or information sufficient to base a belief regarding the same, and therefore denies the same.

XI.

As to the allegations of paragraph 13, except as to the allegation that complainant Mollie Conklin placed her signature at the bottom of certain deeds, conveying the base lands referred to in paragraph 9 of complainant Mollie Conklin's amended bill of complaint, which this answering defendant admits, this answering defendant has no knowledge or information sufficient to base a belief regarding the same, and therefore denies each and every of said allegations.

XII.

As to all the allegations contained in paragraph 14 of complainant Mollie Conklin's amended bill of

complaint, this answering defendant has no knowledge or information sufficient to base a belief regarding the same and therefore denies the same.

XIII.

As to the allegations of paragraph 15 of complainant Mollie Conklin's amended bill of complaint, this answering defendant has no knowledge or information sufficient to base a belief regarding the same, and therefore denies each and every of them.

XIV.

As to whether neither Campbell or Benson, nor any other person, ever informed complainant Mollie Conklin that she had signed deeds to the base lands mentioned in paragraph [41] 9, etc., and as to all the allegations in paragraph 16 of complainant Mollie Conklin's amended bill of complaint, except as to the allegations that certain powers of attorney were placed on record in the recorder's office of Boise County, Idaho, this answering defendant has no knowledge or information sufficient to base a belief regarding the same, and therefore denies the same.

XV.

This answering defendant admits the allegations of paragraph 17, except as to the allegation that the powers of attorney, referred to were alleged powers of attorney, which this answering defendant denies.

XVI.

This answering defendant has no knowledge or information as to whether complainant Mollie Conklin has ever seen or spoken to R. M. Cobban, etc., as alleged in paragraph 18 of complainant Mollie Conk-

lin's amended bill of complaint, and as to that and all other allegations in said paragraph 18, this answering defendant has no knowledge or information sufficient to base a belief regarding the same, and therefore denies each and every of said allegations.

XVII.

This answering defendant admits that there was no administration upon any estate of the said Patrick Reddy in the State of Idaho, but denies that any of its promoting stockholders or anyone interested or connected with it in any way ever had knowledge that no administration had been had upon the estate of Patrick Reddy, deceased, in the State of Idaho, prior to the year 1903, but as to whether Joseph C. Campbell, John A. Benson, and defendants R. M. Cobban and E. B. Weirick, ever knew of such [42] fact, this answering defendant has no knowledge sufficient to base a belief regarding the same, and therefore denies the same. This answering defendant denies that it is a fact that the unknown or any other kind of promoting stockholders of this answering defendant or anyone connected with this answering defendant, knew that it was a fact that neither the said Emily M. Reddy, as administratrix of the Estate of Patrick Reddy, deceased, nor Edward A. Reddy, as administrator, who appear in the powers of attorney to make said powers of attorney, or any of them, or to appoint R. M. Cobban, or any other person or persons, their or either of their attorneys or attorney in fact, in their representative capacity to sell, exchange, transfer, dispose of or deal with said lieu land, or any part or interest therein, or for

any other purpose whatever, but alleges the fact to be that the said Emily M. Reddy, as administratrix, or the said Edward A. Reddy, as administrator, had full power and authority and were fully competent to execute all of said powers of attorney in their representative capacity to sell, exchange, transfer, dispose of and deal with said lieu lands, and every part and parcel thereof.

XVIII.

This answering defendant admits that on the 21st day of September, 1901, R. M. Cobban made, executed, acknowledged and delivered a writing wherein he was attorney in fact for the complainant Mollie Conklin, and also Emily M. Reddy, as administratrix, and Edward A. Reddy, as administrator of the Estate of Patrick Reddy, deceased, conveying a portion of the lieu lands described in paragraph seven of complainant Mollie Conklin's amended bill of complaint to the defendant E. B. Weirick, as trustee, and that said conveyance, together with a [43] certificate of acknowledgment thereof, were in words and figures set forth in paragraph 21 of the bill of *complaint, Mollie Conklin*.

XIX.

This answering defendant denies that the said Cobban or the said Weirick were mere or any other kind of agents and dummies, or agents or dummies, of the said Benson or Henry Turrish, or said or any known or unknown or any other kind of promoting stockholders of this answering defendant, or acting as or were used as mere or any other kind of tools by said Benson or Turrish or said or any promoting stock-

holder or stockholders of this answering defendant, or that said Cobban or Weirick were used as a conduit or otherwise by means whereof or otherwise to affect the alleged or any transfer of said or any lieu lands to this answering defendant thereafter to be organized on the one hand, and of the proceeds thereof to the said Benson on the other or any hand, or otherwise or at all in or about the business of said alleged or any conveyance of said or any lands by said Cobban to the said Weirick, trustee. Denies that said or any transaction was in substance or otherwise of effect, or otherwise, a deal between or for the benefit of, or otherwise, of the said Benson or the Payette Lumber & Manufacturing Company, to be thereafter organized or for either of them or for anyone else. Denies that the said Payette Lumber & Manufacturing Company thereafter to be organized was the real or any other kind of party for whom the said Weirick was acting as trustee or otherwise. Denies that the said Cobban and the said Turkish, or either of them, or any known or unknown, or any other kind of promoting stockholder or stockholders of this answering defendant were acting for and on behalf or for or on behalf of this answering defendant as a [44] beneficiary or otherwise.

XX.

As to whether complainant Mollie Conklin did not know that the powers of attorney or any of them referred to in complainant Mollie Conklin's amended bill of complaint, as having been executed to R. M. Cobban, were in existence or that the conveyance to Weirick, trustee, was in existence prior to the first

day of January, 1903, this answering defendant has no knowledge or information sufficient to base a belief regarding the same, except what appears from the records of the recorder's office of Boise County, Idaho, and therefore denies the same. As to whether complainant Mollie Conklin immediately after January, 1903, and prior to the first day of May, 1903, repudiated the said powers of attorney or any of them, and said conveyance to E. B. Weirick, trustee, referred to in paragraph 21 of complainant Mollie Conklin's amended bill of complaint, this answering defendant has no knowledge or information sufficient to base a belief regarding the same, and therefore denies the same. As to whether complainant Mollie Conklin is ready, able and willing to restore to the said Benson and Campbell, or either of them, everything or anything of value that she has received from them, or either of them, this answering defendant has no knowledge or information sufficient to base a belief regarding the same, and therefore denies the same. As to whether complainant Mollie Conklin has ever received anything of value from any of the defendants in this action, this answering defendant has no knowledge or information regarding the same and therefore denies the same, except as to that part of the allegation relating to this answering defendant. [45]

XXI.

This answering defendant admits that it claims an interest or estate adverse to complainant in the lieu lands described in paragraph 7 of complainant Mollie Conklin's amended bill of complaint. Denies

that it unjustly claims an interest or estate adverse to complainant Mollie Conklin in said lieu lands described in paragraph 7 of complainant Mollie Conklin's amended bill of complaint. Denies that the claim of this answering defendant to the lieu lands referred to in paragraph 7 of complainant Mollie Conklin's amended bill of complaint, or any part thereof, or any interest therein, is without right, title or interest thereto. Denies that the powers of attorney referred to in complainant Mollie Conklin's amended bill of complaint, and the conveyance to the said Weirick, trustee, referred to therein, or either of them, are invalid and fraudulent, or that they constitute a cloud upon complainant Mollie Conklin's title to the said lieu lands, or any part thereof. But this answering defendant alleges the fact to be that it is the sole and exclusive owner of the entire property set forth and described in paragraph 7 of complainant Mollie Conklin's amended bill of complaint, and every part and parcel thereof.

This answering defendant, further answering complainant Mollie Conklin's amended bill of complaint, avers:

I.

That on or about the 19th day of May, 1903, this answering defendant purchased from E. B. Weirick, trustee of Butte, Montana, the lands set forth and described in paragraph 7, of complainant Mollie Conklin's amended [46] bill of complaint (together with other lands), paying therefor a good and valuable consideration, to wit: the sum of \$8.55 $\frac{1}{4}$ per acre, being the full value thereof according to

the market price of such lands in the vicinity of their location, which payment was made in lawful money of the United States, and was accepted by the said E. B. Weirick, trustee, as payment in full for said lands.

That the said E. B. Weirick, trustee, conveyed said lands to this answering defendant by warranty deed, dated May 19th, 1903, which said deed was duly acknowledged by the said E. B. Weirick, trustee, on the 22d day of May, 1903, and thereafter on the 25th day of May, 1903, was delivered to this answering defendant, a copy of which said deed (abbreviated only as to descriptions) is hereto attached, marked Exhibit "A," and made a part hereof.

That this answering defendant was, at the time of the purchase of the lands described in paragraph 7 of complainant Mollie Conklin's amended bill of complaint, an innocent purchaser of said lands for a valuable consideration, and had no information or knowledge of any fact or facts which would lead it or its agents or officers to believe that the title of any of said lands was in question.

That up to and including the time of the purchase of the said lands and the delivery of the deed therefor this answering defendant had no notice or knowledge, directly or indirectly, of any fraud upon the part of any person or persons in the acquisition of the title to said lands, or any part thereof; nor did this answering defendant have any notice or knowledge whatever that said lands or any part thereof were acquired in any other than in the usual, legitimate and lawful [47] manner that lands of any

other character are acquired; nor did it have any notice or knowledge that entry upon said lands was made in any other than in a legal and legitimate manner; but this answering defendant was a *bona fide* purchaser of the said lands in good faith and for a valuable consideration as hereinbefore stated.

II.

That at the time of the purchase of the lands described in paragraph 7 of complainant Mollie Conklin's amended bill of complaint by this answering defendant, and at the time of the delivery to this answering defendant of the deed therefor, the grantor named in said deed, to wit, E. B. Weirick, trustee, was seized in fee, in the possession of and entitled to the possession of all of the lands described in said paragraph 7.

III.

That during the year 1900, being the time complainant Mollie Conklin alleges in paragraph II of her amended bill of complaint that Joseph C. Campbell and John Benson, defendant R. M. Cobban and defendant E. B. Weirick, and certain promoting stockholders of the Payette Lumber & Manufacturing Company, one of which said stockholders was Henry Turrish, afterwards vice-president of the Payette Lumber & Manufacturing Company, and other persons unknown, wrongfully and unlawfully agreed, conspired and confederated together to induce complainant Mollie Conklin, to surrender the base lands, referred to in her amended bill of complaint, to the United States, there was no one promoting the incorporation of this answering defend-

ant, and this answering defendant was not incorporated until January, 1903, when it was first duly authorized to do business within the State of Idaho.
[48]

IV.

And this defendant denies all and all manner of unlawful combination or confederacy wherewith it is by said bill charged; without this there is no other matter, cause or thing in said complainant Mollie Conklin's amended bill of complaint contained material or necessary for this answering defendant to make answer to and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this answering defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges on its behalf most wrongfully sustained.

WHEREFORE this answering defendant prays:

1. That complainant Mollie Conklin's amended bill of complaint be dismissed and that she take nothing by her suit.

2. For costs of suit.

CAVANAH & BLAKE,

Solicitors and of Counsel for Defendant The Payette
Lumber & Manufacturing Company, Pioneer
Bldg., Boise, Idaho.

State of Idaho,

County of Ada,—ss.

E. M. Hoover, being first duly sworn, on oath deposes and says: That he is the general manager of

the Payette Lumber & Manufacturing Company, one of the defendants in the above-entitled action; that he has read the foregoing answer, knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on his information or belief, and as to those matters he believes it to be true.

E. M. HOOVER.

Subscribed and sworn to before me this 30th day of April, 1909.

[Seal]

JOHN J. BLAKE,

Notary Public. [49]

EXHIBIT "A."

THIS INDENTURE, Made this 19th day of May, in the year of Our Lord One Thousand Nine Hundred Three, by and between E. B. Weirick, Trustee, of Butte, Montana, the party of the first part, and the Payette Lumber and Manufacturing Company, a corporation duly organized and existing under and by reason of the laws of the State of Minnesota, the party of the second part.

WITNESSETH, That the said party of the first part, for and in consideration of the sum of one dollar, to him in hand paid by the party of the second part, the receipt of which is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, its successors and assigns, forever, all the following described real estate, situate in Boise County, State of Idaho, as follows, to wit:

The following tracts patented by the United States Government to Nathaniel B. Frisbie:

Patent Number 4531.

S. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. 8, T. 12 N., R. 4 E.

Patent #4532.

SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. 8; NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. 7, T. 12 N., R. 4 E.

Patent #4533.

SE. $\frac{1}{4}$ S. 8, T. 12 N., R. 4 E.

The following tracts patented by the United States Government to C. E. Glover:

Patent #4542.

NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 18, T. 12 N., R. 4 E.

Patent #4731.

Lot 1, S. 18, T. 13 N., R. 5 E.

Patent #4538.

SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. 1, T. 12 N., R. 5 E.

Patent #4541.

SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 18, T. 12 N., R. 4 E. [50]

The following tracts patented by the United States Government to F. A. Hyde & Co.:

Patent# 4522.

N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, S. 23, T. 11 N., R. 3 E.

Patent #4515.

NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 33; all of S. 28, T. 11 N., R. 3 E.

Patent #4524.

N. $\frac{1}{2}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. 24, T. 11 N., R. 3 E.

Patent #4521.

W. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. 10, T. 11 N., R. 3 E.

The following tracts patented by the United States Government to Jacob Goldberg:

Patent #4526.

SE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. 22; SW. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, lots 1, 2, S. 23; NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 14, T. 12 N., R. 3 E. Lot 3, S. 31, T. 13 N., R. 4 E.

Patent #4530.

Lot 9, S. 1, T. 12 N., R. 3 E.

Patent #4528.

Lot 5, S. 1, T. 12 N., R. 3 E.

Patent #4529.

Lot 8, S. 1, T. 12 N., R. 3 E.

Patent #4527.

Lot 4, S. 1, T. 12 N., R. 3 E.

The following tracts patented by the United States Government to Albert Meyer:

Patent #4534.

Lots 1, 2, 3, 4, 5, 6, 7, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. 23; E. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$. Lots 1, 2, 3, 4, 5, S. 26. Lot 7, S. 10, T. 11 N., R. 3 E., SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. 18, T. 12 N., R. 4 E.

The following tracts patented by the United States Government to Hiram M. Hamilton:

Patent #4823.

SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. 8; SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 13, T. 16 N., R. 4 E. [51]

Patent #4553.

N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. 17, T. 12 N., R. 4 E.

Patent #4556.

NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. 22; S. $\frac{1}{2}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 23, T. 16 N., R. 4 E.

Patent #4821.

SE. $\frac{1}{4}$ S. 18; W. $\frac{1}{2}$, S. 17; NE. $\frac{1}{4}$, S. 7, T. 13 N.,
R. 5 E.

Patent #4554.

SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. 17; S. $\frac{1}{2}$ SE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$,
S. 9, T. 12 N., R. 4 E.

Patent #4555.

SW. $\frac{1}{4}$ S. 9, T. 12 N., R. 4 E.

The following tracts patented by the United States
Government to W. W. Curtiss:

Patent #4633.

NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, S.
 $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 17; NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW.
 $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SE, $\frac{1}{4}$, Lots
1, 2, 3, S. 19, T. 11 N., R. 4 E.; E. $\frac{1}{2}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$
SE. $\frac{1}{4}$, S. 24; N. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$, NW. $\frac{1}{4}$, W. $\frac{1}{2}$
SW. $\frac{1}{4}$, S. 25; E. $\frac{1}{2}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$
SW. $\frac{1}{4}$, S. 26; NW. $\frac{1}{4}$, S. 35; SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$,
E. $\frac{1}{2}$ SW. $\frac{1}{4}$, S 34, T. 11 N., R. 3 E.

The following tracts patented by the United States
Government to Edward G. Frisbie:

Patent #4548.

W. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. 7, T. 12 N., 4 E.

Patent #4549.

SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 25, T. 13 N., R. 3 E.

Patent #4547.

SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 25, T. 13 N., R. 3 E.

Patent #4546.

E. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. 18, T. 12 N., R. 4 E.

Patent #4545.

SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 13; SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW.

$\frac{1}{4}$, S. 24; SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. 25, T. 13 N., R. 3 E.
 Lot 1, S. 12, T. 12 N., R. 3 E. Lot 1, S. 18, T. 12
 N., R. 4 E. [52]

The following tracts patented by the United States
 Government to Alfred Ruiz:

Patent #4551.

Lots 1, 2, S. 3; Lots 6, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. 2, T. 11
 N., R. 3 E. Lot 2, S. 31, T. 13 N., R. 4 E.

The following tracts patented by the United States
 Government to Mollie Conklin, Edward A. Reddy,
 Administrator, and Emily M. Reddy, Administra-
 trix of the *state* of Patrick Reddy:

Patent #4511.

E. $\frac{1}{2}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. 31; S. $\frac{1}{2}$ SE. $\frac{1}{4}$,
 S. 32, T. 16 N., R. 4 E.

Patent #4826.

S. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 5,
 T. 15 N., R. 4 E.

Patent #4778.

SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. 19, T. 13 N., R. R. 5 E.

Patent #4784.

SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. 19, T. 13 N. R. 5 E.

Patent #4501.

W. $\frac{1}{2}$ SE. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Lots 3, 4, S. 19, T. 15
 N., R. 4 E.; SE. $\frac{1}{4}$, E. $\frac{1}{2}$, NE. $\frac{1}{4}$, S. 25, T. 15 N., R. 3
 E. Lots 1, 4, S. 34, T. 12 N., R. 3 E.

Patent #4780.

NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. 7, T. 13 N., R. 5 E.

Patent #4785.

SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 29, T. 16 N., R. 5 E.

Patent #4773.

SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. 7, T. 13 N., R. 5 E.

Patent #4775.

NW. $\frac{1}{4}$ S. 25, T. 16 N., R. 4 E.

Patent #4777.

S. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 26, T. 16 N., R. 4 E.

Patent #4776.

NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 26, T. 16 N., R. 4 E. [53]

Patent #4510.

Lot 1, S. 6, T. 15 N., R. 4 E.

Patent #4509.

Lot 2, S. 6, T. 15 N., R. 4 E.

Patent #4508.

Lot 3, S. 5, T. 15 N., R. 4 E.

Patent #4502.

Lot 4, S. 5, T. 15 N., R. 4 E.

Patent #4503.

Lot 2, S. 5, T. 15 N., R. 4 E.

Patent #4507.

SE. $\frac{1}{4}$ NE $\frac{1}{4}$, S. 29, T. 16 N., R. 4 E. Lot 4, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. 4, T. 15 N., R. 4 E.

Patent #4513.

SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. 31, SW. $\frac{1}{4}$ S. 32, T. 16 N., R. 4 E.

Patent #4512.

SW. $\frac{1}{4}$ S. 28, T. 16 N., R. 4 E.

Patent #4514.

SE $\frac{1}{4}$, E. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. 26, T. 13 N., R. 3 E. Lot 1, SE. $\frac{1}{4}$ NE $\frac{1}{4}$, S. 2; W. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. 1, T. 12 N., R. 3 E. N. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. 29; NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, S. 31; W. $\frac{1}{2}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 32, T. 15 N., R. 4 E.

Patent #4774.

N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. 17; NW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. 35, T. 16 N., R. 4 E.

Also land purchased of Arthur M. Thomas, not yet patented, but approved by the Commissioner of the General Land Office, being Lieu Land Selection. And being

Patent #4631.

SE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. 6, T. 15 N., R. 4 E. [54]

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to said property, as well in law as in equity, of the said party of the first part,

TO HAVE AND TO HOLD all and singular, the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and its successors and assigns, forever. And the said party of the first part, and his heirs and assigns, and the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against the said party of the first part, and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, I, said E. B. Weirick, Trustee, being so first authorized, empowered and directed by each and every one of the parties for

whom said trust is held, have hereunto set my hand
and seal the day and year first above written.

E. B. WEIRICK,
Trustee.

State of Montana,
County of Silver Bow,—ss.

On this 22d day of May, in the year of 1903, before me John S. Dutton, a Notary Public in and for said County and State, personally appeared E. B. Weirick, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same by the authority of and at the direction and request of the persons for whom said trust was by him held.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

[Seal] JOHN S. DUTTON,
Notary Public in and for County of Silver Bow,
Montana.

My commission expires December, A. D. 1905.

Service of above and foregoing Amended Answer
together with a copy accepted May 1st, 1909.

WM. B. DAVIDSON,
Of Counsel for Mollie Conklin.

[Endorsed]: Filed May 1, 1909. A. L. Richardson, Clerk. [55]

[**Replication of Mollie Conklin to Answer of Payette
Lumber & Mfg. Co.**]

*In the Circuit Court of the United States for the Dis-
trict of Idaho, in the Ninth Judicial Circuit.*

IN EQUITY—CONSOLIDATED NO. 60.

THE UNITED STATES OF AMERICA and MOL-
LIE CONKLIN,

Complainants,

vs.

PAYETTE LUMBER AND MANUFACTURING
COMPANY, a Corporation, et al.,

Defendants.

This replicant, Mollie Conklin, saving and reserv-
ing to herself all and all manner of advantages of ex-
ceptions which may be had and taken to the manifold
errors, uncertainties and insufficiencies of the answer
of the defendant Payette Lumber & Manufacturing
Company, a corporation, for replication thereunto
saith: That she does and will aver, maintain and
prove her said bill to be true, certain and sufficient in
the law to be answered unto by the said defendants;
and that the answer of the said defendant is very un-
certain, evasive and insufficient in law to be replied
thereunto by this replicant; without that, that any
other matter or thing in the said answer contains ma-
terial, or effectual in the law to be replied unto,
and not herein and hereby well and sufficiently replied
unto, confessed or avoided, traversed or denied is true
all which matter and thing this replicant is ready to
aver, maintain and prove as this Honorable Court

shall direct and humbly pray as in and by her said bill she has already prayed.

N. E. CONKLIN

Residence Berkeley, Cal., [56]

WM. B. DAVIDSON,

Boise, Idaho.

Solicitors and of Counsel for Complainant, Mollie Conklin.

Service of the above and foregoing replication accepted this 1st day of June, A. D. 1909.

CAVANAUGH & BLAKE,

Solicitors for the Defendant Payette Lumber & Manufacturing Co.

[Endorsed] : Filed June 1, 1909. A. L. Richardson, Clerk. [57]

In the Circuit Court of the United States, District of Idaho, for the Ninth Judicial District, Central Division.

MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually, and also as Trustee, PAYETTE LUMBER AND MANUFACTURING COMPANY, a Corporation, JOHN DOE, MARY DOE, RICHARD ROE, and THOMAS ROE,

Defendants.

Answer of Defendants R. M. Cobban and E. B. Weirick.

ANSWER OF THE DEFENDANTS R. M. COBBAN, E. B. WEIRICK, PERSONALLY, AND E. B. WEIRICK, TRUSTEE, TO COMPLAINANT'S BILL OF COMPLAINT.

The defendants, R. M. Cobban, E. B. Weirick, personally, and E. B. Weirick, as trustee, reserving all manner of exceptions that may be had to the uncertainties and imperfections of complainant's bill of complaint, and answering thereto, or to so much thereof as they are advised is material to be answered, and say:

I.

As to paragraph one as to whether or not complainant is domiciled or is a citizen of the State of California, United States of America, or is a resident of the town of Berkeley, in said state last named, or that she was the wife or is the widow of A. R. Conklin, who is dead, these defendants have no knowledge, but believe that the same is true.

II.

Admit the allegations of paragraph numbered two of said bill of complaint. [58]

III.

Admit the allegations contained in paragraph three of said bill of complaint.

IV.

Admit the allegations of paragraph four of said bill of complaint so far as these defendants, or either of them, have any knowledge or information relative to

the correctness thereof.

V.

Deny that these defendants, or either of them have any knowledge or information as to the citizenship of any party or parties attempted to be designated or designated in said bill of complaint as John Doe, Mary Doe, Richard Roe or Thomas Roe.

VI.

These defendants admit that the value of the lands described in said bill of complaint is in excess of \$5,000.00, and that a one-half interest in the lands described in the said bill of complaint is of a value in excess of \$5,000.00.

VII.

1. In answer to paragraph seven these defendants deny that complainant is the owner in fee, or otherwise, of an undivided one-half interest or any interest in any lands described in said bill of complaint.

2. Deny that she is entitled to immediate, or any possession of said land, or any part or portion thereof.

3. Admit that the said complainant is not in possession of said lands, or any part thereof.

4. Admit that these answering defendants are not in possession of the said land, but, in this connection allege the facts to be, as these defendants are informed and believe, that Payette Lumber & Manufacturing Company is now, and at all times [59] subsequent to the purchase of the lands described in said bill of complaint, has been, the owner and in possession of said lands and all parts thereof.

5. Admit that the said lands are wild and un-

cultivated timber lands, and allege, on information and belief, that the said lands at the date hereof are in possession of the defendant Payette Lumber and Manufacturing Company, a corporation, one of the defendants in this action.

VIII.

In answer to paragraph eight of complainant's said bill these defendants deny that they, or either of them, have any knowledge or information relative to the alleged facts therein stated and require proof thereof.

IX.

1. Admit that the lands referred to as base lands were and are situated in the State of California, and were in the year 1900 included within the public forest reservation under the laws of the United States.

2. Admit that the complainant was the owner of an undivided one-half interest in said lands described in paragraph eight of said bill of complaint.

3. Deny having any information as to when Patrick Reddy died.

4. Admit, on information and belief, that in August, 1900, the estate of Patrick Reddy was in process of administration in the Superior Court of the City and County of San Francisco, State of California.

5. Admit that Emily M. Reddy and Edward A. Reddy were the then duly appointed, qualified and acting administratrix and administrator with will annexed of the said estate of the [60] said Patrick Reddy, deceased.

6. Admit that the base lands described in paragraph nine are situated in the State of California.

7. Deny that these defendants, or either of them, have any knowledge or information sufficient to form a belief as to whether or not complainant was, at any time referred to in her bill of complaint, the owner in fee of a like right, or any right, title or interest in or to other base lands situated in the State of California than the lands specified in said bill of complaint, and therefore deny the same.

X.

1. Deny that these defendants, or either of them, have any knowledge or information sufficient to form a belief, as to whether, prior to the year or during the year 1900, John A. Benson, referred to in said bill of complaint, had been or was at any time, a client or intimate personal friend or any friend of Joseph C. Campbell.

2. Admit that the said John A. Benson for many years last passed has been thoroughly learned in the laws of the United States respecting the acquisition of lands under the United States laws, and has been engaged in the business of the location, purchase, and sale of such lands in the State of California, Idaho, and elsewhere.

XI.

Deny that during the month of August, or at any time, or at all, these answering defendants, or either of them, and Joseph C. Campbell, John A. Benson, and certain promoting stockholders of the thereafter incorporated company, Payette Lumber and Manufacturing Company, and Henry Turrish, or any or either [61] of said parties, or other parties whose names are unknown to complainant, did wrongfully

or unlawfully agree or did conspire or confederate together to induce plaintiff by means of artifice or deceit, to surrender any base lands, or any lands, to the United States, or to select under the laws of the United States in that behalf, other lands, in lieu of any base lands, or otherwise, or did confederate, conspire or unlawfully agree, or agree at all by means of artifice or deceit, or otherwise, to cheat or defraud complainant out of any title, or any right, or any interest, or any right of possession, or of the proceeds of, any lands or other property.

2. Deny that these defendants, or either of them, either alone or associated with any person or persons whomsoever, in any manner, or at all, cheated or attempted to cheat, by means of artifice or otherwise, or at all, the complainant out of any right, or title, or interest, or claim, of any kind or character in or to any lands described or attempted to be described in said bill of complaint.

3. Deny that these defendants, or either of them, either alone, or associated with any person or persons whomsoever, conspired wrongfully and unlawfully to sell any lands described in said bill of complaint, or unlawfully or wrongfully deprived the complainant of the use, possession and enjoyment of any lands described in said complaint as lieu lands, or any other lands, or any proceeds thereof, or any part thereof, or converted the proceeds of such lands, or any lands, to their own use.

4. Deny that these defendants, or either of them, have any knowledge, or ever did have any knowledge, as to any alleged transaction in the office of, or in the

presence or hearing of, Joseph C. Campbell in the month of August, 1900, or at any other [62] time, wherein an oral agreement of any kind or character was entered into by and between the said John A. Benson and said complainant, or John A. Benson and complainant and Emily M. Reddy, as administratrix of the Estate of Patrick Reddy, deceased, or otherwise.

5. Deny that these defendants, or either of them, have any knowledge or information as to any agreement made by John A. Benson with complainant at any time, or at all, as to any property described in said complaint or in said paragraph eleven of said bill of complaint, wherein the said John A. Benson agreed to purchase from complainant, and the complainant agreed to sell to Benson the base lands described in paragraph IX of complainant's bill of complaint, or that Benson should pay therefor \$4.00 per acre, or that deeds therefor from complainant and the administratrix of the estate of the said Patrick Reddy, deceased, to the said John A. Benson should be made and placed in escrow, to be taken out of the escrowholder's hands by the said Benson as he paid for the said lands, or that the said Benson should pay therefor and complete payment for all of said base lands or take all of said deeds out of escrow within ninety days thereafter.

6. Deny that these answering defendants, or either of them, ever had any knowledge or information, or intimation of the existence of any such agreement prior to reading such averment in complainant's

amended bill of complaint during the month of October, 1909.

7. Deny having any knowledge or information as to whether Joseph C. Campbell represented to complainant that Benson was reliable, or trustworthy or fully able to carry out any promise made by him.
[63]

8. Deny having any knowledge or information as to any negotiations for a sale to Benson of any base lands, or who conducted such negotiations, if any were had.

9. Deny having any knowledge or information as to any deeds from complainant or from the Reddy Estate being placed in escrow for the benefit of Benson, or for the benefit of anyone else.

XII.

1. Deny having any knowledge or information as to whether or not complainant at any time had confidence in Joseph C. Campbell, or in any advice which he did or might give in relation to John A. Benson, or anyone else, or any confidence which he might have in John A. Benson to draw deeds of any base lands, or as to whether or not complainant did relieve or rely upon any promise of the said Benson to pay for any base lands the sum of \$4.00 per acre, or any sum of money whatsoever.

2. Deny having any knowledge or information as to any other allegation made by the said complainant in paragraph twelve of her amended bill of complaint.

XIII.

1. Deny having any knowledge or information as

to whether or not Benson was reliable or trustworthy or able to carry out any promise, or that he made any promise to the complainant as alleged in paragraph thirteen of complainant's amended complaint.

2. Deny that these defendants, or either of them, have any knowledge or information sufficient to form a belief, as to any act of the said Benson in drawing or pretending to draw, or causing to be drawn, any deed or deeds of any base lands purporting to convey said lands, or any part of said lands, from [64] complainant or any representative of the Reddy estate to the said Benson; and—

3. Deny that these defendants, or either of them, have any knowledge or information as to any alleged contract between Benson and the said Mollie Conklin, or as to any action of Campbell purporting to represent the complainant in this action.

4. Admit that on or about the month of August, 1900, deeds were prepared and signed by complainant and by the representatives of the Reddy Estate purporting to convey said base lands from complainant and the said representatives of the Reddy Estate to the United States of America.

5. Admit that the said Benson then delivered the said last mentioned prepared deeds to Campbell and that the said deeds were duly presented to complainant for execution and signature, and that complainant, having every opportunity to examine and inspect the same, did then place her signature at the bottom of the said deeds conveying and relinquishing the said base lands to the United States of America, and did then after such execution return to Joseph C. Camp-

bell for delivery to the said Benson the said deeds, who immediately caused the same to be placed on record in the respective counties in which said lands were situated, and that they then and there became public records in the office of the County Recorder of Tulare County, at Visalia, California, and in the office of the recorder in the County of Inyo, at Independence, California, and were open to the inspection of the complainant, or any other person or persons seeking information concerning the said property.

6. Deny on information and belief that either the said Benson or the said Campbell made any representations to the said complainant as to the contents of the said deeds other than that they were deeds relinquishing said lands as were described [65] therein to the Government of the United States.

XIV.

1. Admit that at the time complainant received said last mentioned deeds from said Campbell for signature, that the said Campbell also sent therewith, for complainant's signature, certain other papers, and admits that said papers, were sent to the complainant to be signed by her.

2. Deny that these defendants, or either of them, have any knowledge or information as to whether the said complainant examined any paper or papers sent to or signed by her.

3. Deny that these defendants, or either of them, have any knowledge or information as to any belief of the said complainant at the time of signing the papers sent to her.

XV.

These defendants admit, on information and belief, that among the papers prepared and sent to complainant and signed by her, were papers purporting on their face to be applications to select lieu lands in place of base lands, and papers purporting on their face to be powers of attorney in blank, and that the said powers of attorney did not at the time complainant signed same, contain the name of any person as attorney.

2. Admit that the name of R. M. Cobban was inserted in said power of attorney after complainant had signed the same.

3. Deny that such insertion of the name of R. M. Cobban was without the complainant's knowledge or consent, but, on the contrary, allege the facts to be, that the said powers of attorney were signed by the complainant, well knowing that the same were in blank, and that the name of R. M. Cobban, or some other person who might make the selection under the applications signed by her, would be inserted in said powers of attorney [66] for the purpose of completing the title to such lands, and for the purpose of selling the said lands to other parties.

4. Deny that the said powers of attorney did not contain any dates, but allege, to the contrary, that the said several powers of attorney each contained the date of their execution by complainant, which said powers of attorney authorized the attorney named therein to enter into and take possession of each and every tract of public lands in any State or territory of the United States, that has been, or may hereafter

be selected, by the party signing the power of attorney, in lieu of the land surrendered to the United States as aforesaid (which land was described in said several powers of attorney), or any portion thereof, “whether the said selections be made by us personally or by someone else, acting through power of attorney from us.” The said several powers of attorney also authorized the attorney to grant, bargain, sell and convey by good and sufficient deed all the right, title and interest of the party executing such power of attorney, which she might have, own, hold or possess, and all the right, title and interest that she might thereafter acquire in or to any land that might be selected as aforesaid, or any part thereof, for such price as to said attorney might seem proper, and to make, execute, acknowledge and deliver all necessary deeds, conveyances or assignments, or other instruments of whatever kind or nature, giving to the said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as she might or could do if personally present; and reciting that “for value received, the receipt whereof is acknowledged,” the said several powers of attorney were made and [67] declared to be irrevocable, which said several powers of attorney were each duly executed by complainant and acknowledged before a notary public in the city and county of San Francisco, State of California.

5. Deny that said applications to select lieu lands in place of base lands sent to complainant, and that

the several powers of attorney in blank sent to complainant were sent to her surreptitiously, or in furtherance of any conspiracy or scheme to defraud, but, on the contrary, allege that the said powers of attorney were sent to complainant openly and honestly and with the intention and purpose of enabling the complainant to thus dispose of her lieu lands which should be selected in place of base lands which she had surrendered and relinquished to the Government of the United States.

XVI.

Deny that the complainant remained in ignorance as to the fact that she had signed deeds relinquishing to the Government of the United States the base lands described in paragraph nine of complainant's amended bill of complaint, or that she remained in ignorance of the fact that she had signed papers authorizing the selection of lieu lands in place of base lands, or that she remained in ignorance of the fact that she had signed irrevocable powers of attorney for the disposition and sale of such lieu lands, but, on the contrary, allege that at the time of signing said applications to select lieu lands and at the time of signing the said powers of attorney, she was fully advised of the character and nature and provisions of the papers and documents which she then and there signed.

2. Deny having any knowledge or information as to the other matters alleged in paragraph sixteen of said amended bill of complaint, and therefore deny the said several allegations therein made, as to complainant's knowledge and as to [68] representations made to her by other parties.

3. Deny that the said Campbell wilfully made any false representations or statements to complainant, or her agents, in furtherance of any conspiracy, or for the purpose of lulling to rest the inquiries or suspicions, or any inquiry or suspicion of complainant, in relation to any applications to select lieu lands, or in relation to any powers of attorney referred to in paragraphs fifteen and sixteen of complainant's amended bill of complaint.

4. Deny that there was any conspiracy of any kind or character, and deny that complainant was in any manner, or at all, cheated or defrauded by these defendants, or either of them, or by these defendants, or either of them, acting in collusion with or in connection with any person or persons whomsoever.

XVII.

1. Admit that the form of the powers of attorney signed, acknowledged and delivered by the said complainant was substantially as specified in paragraph seventeen of said bill of complaint; that the description of the instrument purporting to have been executed by Mollie Conklin, Edward A. Reddy, administrator of the estate of Patrick Reddy, deceased, and Emily M. Reddy, administratrix of the Estate of Patrick Reddy, deceased, on the 27th of September, 1900, wherein R. M. Cobban, one of the answering defendants herein, is named as attorney, are substantially correct as alleged in said paragraph seventeen of said amended bill of complaint, and these defendants allege that the said several powers of attorney were signed by complainant on different dates and at different times, some of them having been signed in

September, 1900, and others signed as late as March, 1901. [69]

XVIII.

1. Admit that complainant is not acquainted with and has never spoken to defendant, R. M. Cobban.

2. Deny that a question of trust or confidence or faith in the defendant, R. M. Cobban, was raised by any action or actions of complainant in signing or executing the papers referred to in her bill of complaint.

3. Deny that complainant never received anything of value or any consideration for the signing and execution of the said relinquishments to the United States and said applications to select lieu lands and said several powers of attorney to this defendant, but, on the contrary, allege the facts to be, that at the time of their execution and delivery, the defendant, R. M. Cobban, paid the full purchase price of the said base lands, to wit, \$4.00 and more per acre, and allege that the series of papers which she signed and executed were at the time of their execution and are now, the usual way for relinquishing base lands and authorizing the selection of lieu lands, and the sale of said lieu lands when selected, and that the said complainant received full consideration for the execution and delivery of said papers.

4. Admit that defendant, R. M. Cobban, never made any representations to said complainant in relation to the relinquishment of said base lands to the Government of the United States, nor as to the selection of lieu lands, nor as to the sale of said lieu lands when selected, but that the said arrangement with complainant was made entirely between the said com-

plainant and her representatives and agents in California, and that the answering defendant, Cobban, carried on his negotiations wholly with the agent and representative of complainant, John A. Benson, and that said defendant acted in good faith and paid to the [70] said John A. Benson, as agent of complainant, the entire purchase price of said base lands, which was the sum of \$4.00 per acre in some cases, and more than that amount in other cases.

5. Deny that complainant never received any value by way of consideration, or otherwise, from the defendant, Cobban.

6. Deny that complainant never did knowingly sign the said relinquishments, or the said applications, or the said several powers of attorney, but, on the contrary, alleges the facts to be, that she did knowingly sign the said relinquishments to the Government of the United States of the said base lands, and the said applications to select lieu lands in place thereof, and did knowingly sign the said several powers of attorney authorizing the sale of such lands when selected.

7. Deny that complainant never knowingly or consenting thereto gave the said powers of attorney, but, on the contrary, allege that she, knowingly and consenting thereto, gave each and all of the said powers of attorney, and that they were each and all made irrevocable to the said R. M. Cobban, and that each and every one of them authorized R. M. Cobban to sell, transfer, dispose of, exchange or otherwise deal in the said lieu lands and the whole thereof in accordance with his own judgment.

8. Deny that the said powers of attorney, or any

or either of them, were wholly, or at all, without consideration of any kind or character, but, on the contrary, allege that the said complainant was paid for said powers of attorney, for said applications to select lieu lands, and for said relinquishments to the Government of the United States, the full purchase price of the said base lands, to wit, the sum of \$4.00 per acre for [71] each and every acre of land described in said amended bill of complaint that the said complainant relinquished to the Government of the United States.

9. Deny on information and belief that the said complainant never acknowledged said powers of attorney, or any of them, but, on the contrary, allege on information and belief, that the said complainant duly acknowledged each and every one of the said powers of attorney and duly appeared in person before the several notaries public referred to in said powers of attorney, whose names are attached to the certificates of acknowledgment annexed to the said several powers of attorney, and that said complainant duly acknowledged each of said powers of attorney as specified in said acknowledgments.

10. Deny that any of the certificates of acknowledgment or either of them, are wholly or at all false or untrue, and deny that any or either of said acknowledgments were taken without complainant's knowledge or consent, or that any or either of said powers of attorney are false or forged.

XIX.

1. Deny having knowledge or information sufficient to form a belief as to whether or not any administration was ever had upon the Estate of Patrick

Reddy, deceased, in the State of Idaho.

2. Deny on information and belief that Emily M. Reddy, as administratrix, and Edward A. Reddy, as administrator, who appear in said alleged powers of attorney to have executed the same, did not have power or authority to make and execute the said alleged powers of attorney, or either of them, but allege, to the contrary, that the said R. M. Cobban was duly made and appointed attorney in fact by Emily M. Reddy, as administratrix [72] and attorney in fact by Edward A. Reddy, administrator, and that the said powers of attorney were valid and existing powers of attorney and have been recognized as such by the United States Land Office located in Idaho.

XXI.

1. Admit that on the 21st day of September, 1901, the said R. M. Cobban executed, acknowledged and delivered the writing as set out in paragraph XXI of complainant's bill in equity.

XXII.

1. Admit that during the year 1902 the lieu lands selected by the defendant, R. M. Cobban, were patented by the United States in the name of Mollie Conklin, Emily M. Reddy, administratrix, and Edward A. Reddy, administrator; but deny that said lands or any of them were patented to the said complainant, Emily M. Reddy and Edward A. Reddy otherwise than for the use and benefit of the defendant, R. M. Cobban.

2. Admit that at the time R. M. Cobban made and acknowledged a deed of said land to E. B. Weirick, and placed said deed on the records of Boise,

Idaho, the complainant, Mollie Conklin, did not have, nor did Emily M. Reddy, Adm'x., or Edward A. Reddy, as Adm'r, have any right, title or interest in or to said property, but that the said property, and, all of it, was owned by the said R. M. Cobban, or by the parties represented by him, and that at said time and place, the said R. M. Cobban had full and lawful authority and right to transfer and convey the title to said lieu lands, and all the title to said lieu lands to E. B. Weirick, trustee.

3. Deny that at said time Henry Turrish, Joseph C. Campbell, John A. Benson, or any promoting stockholder of the Payette Lumber and Manufacturing Co., had any right, title or interest in or to [73] the said property or any part or portion thereof.

XXIII.

Deny that at any time, the said Cobban and the said Weirick, or either of them, were agents or dummies, or that either of them was an agent or dummy of Benson, or Turrish, or any known or unknown promoting stockholder.

2. Deny that Cobban and Weirick, or either of them, acted as, or were used as, a mere tool, or as mere tools, or at all, by the said Benson, or Turrish, or any promoting stockholder of the Payette Lumber and Manufacturing Company or either the said Benson, Turrish, or any promoting stockholder.

3. Deny that the said Cobban and Weirick, or either of them, were used as conduits to effect any alleged transfer of said lieu lands to the said Lumber Company, thereafter to be organized.

4. Deny that the said Cobban and Weirick, or either of them, were or was used as a conduit for the

transfer of any of the proceeds of said lands to Benson.

5. Deny that any acts of the said R. M. Cobban and E. B. Weirick, either personally or as trustees, were in any respect under the control or direction, or for the use or benefit of the said Benson or Turkish, or any promoting stockholder.

6. Deny that the said transaction was in substance or effect, or at all, a deal between or for the use or benefit of the said Benson or the said Payette Lumber and Manufacturing Co.

7. Deny that the said Payette Lumber and Manufacturing Company thereafter to be organized was the real party for whom said Weirick was acting as trustee, or that said company was the purported or intended beneficiary thereunder.

8. Deny that the said Cobban and the said Turkish, or [74] either of them, were promoting stockholders of said company, or were acting for or on behalf of said company.

XXIV.

1. Deny that complainant did not know that the said powers of attorney were in existence, or that the said conveyance to the said Weirick, trustee, was in existence prior to the first day of January, 1903.

2. Deny that complainant had any right or authority to repudiate the said powers of attorney, or either of them, and deny that her alleged repudiation of said powers of attorney, or either of them, had any force or effect whatever as against the said Weirick, personally, or as against the said Weirick, as trustee, but allege, to the contrary, that the said Weirick, personally, and the said Weirick, as trustee, was and

is a bona fide purchaser for value, of all the property described in paragraph IX of complainant's amended bill of complaint.

3. Denies having knowledge or information sufficient to form a belief as to any verbal agreement between complainant and Benson.

4. Deny having any knowledge or information sufficient to form a belief as to any money complainant has received from the said Benson upon the contract made between her and Benson relative to the lands in controversy in this suit.

XXV.

1. Deny that the said R. M. Cobban, E. B. Weirick, individually, and also as trustee, Payette Lumber and Manufacturing Company, John Doe, Mary Doe, Richard Roe and Thomas Roe, or either of them, unjustly claim any interest or estate adverse to complainant in any lieu lands described in paragraph VII of complainant's bill of complaint herein. [75]

2. Deny that none of the said defendants has any rightful claim, right, title or interest in or to said lands.

3. Deny that the claims of the said R. M. Cobban and E. B. Weirick, individually and as trustee, or either of them, are without right, or that any conveyance to E. B. Weirick is invalid, or fraudulent, or forged.

XXVI.

1. Deny that any of the actions or doings of these answering defendants, or either of them, are contrary to equity or good conscience, or tend to any manifest wrong, injury, or oppression of complainant, and deny that complainant is entitled to any relief whatever

in a court of equity or elsewhere.

Deny, generally, each and every allegation contained in complainant's said amended bill of complaint not hereinabove specifically admitted or denied.

By way of affirmative defense to the alleged and pretended cause of action set forth in plaintiff's Mollie Conklin's amended bill of complaint, these answering defendants allege the facts to be:

1. That on or about the month of February, 1901, R. M. Cobban, being then engaged in the real estate business in the City of Butte, Silver Bow County, Montana, made arrangements with certain residents of Montana, whereby the said parties through the said R. M. Cobban, undertook the purchase of lieu land scrip for the purpose of investment, and in the matter of making such investment, the said R. M. Cobban, acted for himself, and as agent for the parties above named, among said parties being E. B. Weirick, named herein as E. B. Weirick, and E. B. Weirick, as trustee.

2. That in the purchase of the said scrip, an abstract of title was furnished to the said R. M. Cobban, showing a clear [76] title in the person offering the scrip for sale, and a conveyance by such party of land in a Forest Reserve by warranty deed to the United States Government.

3. There was also furnished to the said R. M. Cobban, with each abstract submitted, a power of attorney wherein, and whereby the person named, or to be named or appointed in the power of attorney was authorized "to enter into and take possession of each and every tract of public land in any State or territory

of the United States that has been, or may hereafter be, selected by us in lieu of the lands surrendered to the United States as aforesaid, or any portions thereof, whether the said selection or selections be made by us personally or by some one else acting through power of attorney for us.” And also granting to the said attorney in fact full power and authority “to grant, bargain, sell and convey by good and sufficient deed, all of the right, title and interest” that the party executing such power of attorney then owned, or held possession of; also all the right, title and interest that the party making such power of attorney might thereafter acquire in or to the land that has been or that might thereafter be selected as aforesaid, or any part thereof, for such sum or price as such party might deem proper. Such power of attorney was by the act of the party signing the same made irrevocable.

4. That with such power of attorney was also furnished a further power of attorney authorizing the party named or to be named in the power of attorney signed, to enter into and take possession of each and every tract of land selected by the party executing the power of attorney and authorizing the said party to conduct all business necessary in such case before the Land Office at Boise, Idaho, or before the Department of the Interior at Washington, D. C., with full power of substitution and revocation, [77] and authorizing such attorney to post notices of the application upon the ground and make proofs of such posting and further affidavits required by the United States Land Office in the matter of perfecting the

title to the lands selected in lieu of land granted by the party offering for sale such scrip to the Government of the United States.

5. That pursuant to the said plan above outlined, the said R. M. Cobban, on or about the 19th day of February, 1901, purchased in the regular course of business from the plaintiff, Mollie Conklin, through John A. Benson of San Francisco, California, certain lieu land scrip in the following manner, that is to say: That on or about the date last mentioned, the said Benson caused to be deposited in either the First National Bank of Butte, Montana, or the First National Bank of Boise, Idaho, or the Anglo-California Bank, Ltd., of San Francisco, California, in escrow, the following-named papers, namely:

(a) Abstracts of title showing the prior ownership by Mollie Conklin et al. of 640 acres of land in Tulare County, California, being

E. $\frac{1}{2}$ of the NE. $\frac{1}{4}$, N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of Section 16, Township 18 South, Range 34 East, Tulare County, California;

W. $\frac{1}{2}$ of SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ of Section 14, Township 18 South, Range 34 East, Tulare Co., California;

S. $\frac{1}{2}$ of NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of Section 14, Township 20, South, Range 35 E., Tulare County, California.

(b) Warranty deed conveying said land, executed by Mollie Conklin et al., transferring said land to the Government of the United States, and showing a record of said deeds in the office of the County Clerk & Recorder of Tulare County, Cal., [78] being the county in which the said land is situated.

(c) Powers of attorney, irrevocable, signed by the said Mollie Conklin et al., and in substantially the following form, to-wit:

“KNOW ALL MEN BY THESE PRESENTS: That, Whereas, by an act of Congress, approved June 4, 1897, (30 Stat. 36) it is provided,

‘That in cases in which a tract covered * * * a patent is included within the limits of a public forest reservation * * * the owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement,’ etc.

And, whereas, on the nineteenth day of September, 1900, We, Mollie Conklin, a widow of Bakersfield, County of Kern, State of California, and Edward A. Reddy and Emily M. Reddy, Administrator and Administratrix of the Estate of Patrick Reddy, deceased, both of the City and County of San Francisco, said State, were the owners of the following described land:

.....
.....
.....
.....

And, whereas, on the said last-named day we surrendered the said land to the United States by deed of conveyance duly executed by which we became entitled to select other lands of equal acreage in lieu thereof.

Now, therefore, we have made, constituted and appointed, and by these presents do make, constitute and appoint of in the County of

....., State of, our true and lawful attorney for us and in our names, places and steads, to enter into and take possession of each and every tract of public land in any State or Territory of the United States that has been or may hereafter be selected by us in lieu of the land surrendered to the United States as aforesaid, or any portion thereof, whether the said selection or selections be made by us personally or by some one else acting through power of attorney for us.

Our said attorney in fact is also hereby authorized and empowered to grant, bargain, sell and convey by good and sufficient deed, all of the right, title and interest that we may hereafter acquire of, in and to the land that has been or may hereafter be selected as aforesaid, or any part thereof, for such sum or price as he may deem proper.

And for all or any of the powers and purposes aforesaid, for us and in our names to make, execute and acknowledge and deliver all necessary deeds, conveyances, assignments or other instruments of whatever kind or nature.

Giving and granting unto our said Attorney full power and authority to do and perform all and every act and thing whatsoever [79] requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney or his substitute or substitutes shall lawfully do or cause to be done by virtue hereof.

For value received, the receipt whereof is hereby acknowledged, this Power of Attorney is hereby made and declared to be irrevocable by us or otherwise.

In Witness Whereof, we have hereunto set our hands and seals on the twenty-eighth day of February, 1901.

MOLLIE CONKLIN.

Signed, Sealed and Delivered in the Presence of

C. E. GLOVER.

J. H. LAVENSON.

EDWARD A. REDDY,

Administrator of the Estate of Patrick Reddy, Deceased.

EMILY M. REDDY,

Administratrix of the Estate of Patrick Reddy, Deceased.

State of California,

City and County of San Francisco,—ss.

On this twenty-eighth day of February, one thousand nine hundred and one, before me Thomas S. Burnes, a Notary Public in and for the said City and County of San Francisco, personally appeared Mollie Conklin (a widow) Edward A. Reddy, Administrator, and Emily M. Reddy, Administratrix of the Estate of Patrick Reddy, deceased, personally known to me to be the same persons whose names are subscribed to the within instrument and they severally duly acknowledged to me that they executed the same, and the said Edward A. Reddy, and the said Emily M. Reddy, further acknowledged to me that they executed the same respectively as Administra-

tor and Administratrix of the Estate of Patrick Reddy, deceased.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

THOMAS S. BURNES,
Notary Public in and for the City and County of
San Francisco, State of California.”

(d) Also further Powers of Attorney, signed by the said Mollie Conklin, in substantially *in* the following form:

“Whereas, the undersigned, Mollie Conklin, whose postoffice address is Bakersfield, Cal., and Edward A. Reddy, Administrator and Emily M. Reddy, Administratrix, of the estate of Patrick Reddy deceased, whose postoffice address is Crocker Building, San Francisco, California, have made application to select under the provisions of the Act of June 4, 1897 (30 Stats. 36), in the U. S. Land Office at [80], the following described tract:

.....
.....
.....

Now, therefore, we the said Mollie Conklin, Edward A. Reddy and Emily M. Reddy, Administrator and Administratrix of the Estate of Patrick Reddy, deceased, have made, constituted and appointed, and by these presents do make, constitute and appoint, of, our true and lawful attorney in fact in our name, place and stead, to enter into and take possession of each and every tract of land so selected by us. Said as attorney in fact

is hereby authorized and empowered to conduct all business necessary in said case before the Land Office at Boise, Idaho, or before the Department of the Interior at Washington, D. C., with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney or his substitute or substitutes shall lawfully do or cause to be done by virtue hereof.

And, Whereas, it is provided by Circular 'P,' dated January 29, 1900, of the Honorable Commissioner of the General Land Office that a notice of such selection be posted on the ground described in the application, and the proof of such posting be filed in the U. S. Land Office for the District in which the land is situated.

Now, Therefore, is hereby duly authorized and appointed as my agent to post, notices on the ground described in said application, and to make affidavit of that fact, and also of the fact that said notices remain posted during the period of publication.

MOLLIE CONKLIN.

E. A. REDDY,

Administrator of the Estate of Patrick Reddy,
Deceased.

EMILY M. REDDY,

Administratrix of the Estate of Patrick Reddy,
Deceased.

San Francisco, California,
February 28th, 1901.—ss.

On this twenty-eighth day of February, one thousand nine hundred and one, before me, Thomas S.

Burnes, a Notary Public in and for the said City and County of San Francisco, personally appeared Mollie Conklin, a widow, Edward A. Reddy, Administrator, and Emily M. Reddy, Administratrix of the Estate of Patrick Reddy, deceased, personally known to me to be the same persons whose names are subscribed to the within instrument, and they severally duly acknowledged to me that they executed the same, and the said Edward A. Reddy, and the said Emily M. Reddy, further duly acknowledged to me that they executed the same respectively as Administrator and Administratrix of the Estate of Patrick Reddy, deceased.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written. [81]

THOMAS S. BURNES,
Notary Public, in and for the City and County of San Francisco, State of California.

My term of office expires Jan. 6th, A. D. 1894."

The said Powers of Attorney in each case being duly acknowledged by the said Mollie Conklin before a notary public in and for the City and County of San Francisco, State of California, and bearing the seal of such notary public; the said powers of attorney, in each case, leaving the name of the attorney appointed blank in order that the same might be filled by the party purchasing the lieu land script offered for sale.

(e) There was also deposited in said bank with said papers above described and in connection with said papers, a blank form of application to select and

locate land in lieu of the land in the Sierra Forest Reserve, Tulare and Inyo Land District, State of California, surrendered by the said Mollie Conklin, said application being in substantially the following form:

Act. June 4, 1897 (30 Stat. 36).

SELECTION IN LIEU OF LAND IN THE
SIERRA FOREST RESERVE,

Tulare and Inyo Land District, State of California.
Created

TO THE REGISTER AND RECEIVER,
United States Land Office,

.....

.....

Gentlemen:—

In accordance with the provisions of an Act of Congress approved June 4, 1897, entitled “An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1898, and for other purposes,”

I, Mollie Conklin, of San Francisco, City and County, State of California, do hereby select and locate the following described tract of surveyed land, to wit:

.....
.....

[82]

.....
.....

IN LIEU OF

.....
.....
.....
.....

The said last mentioned tract is included within the limits of the Sierra Forest Reservation in California, and being the owner, and desiring to select other land in lieu of said tract, I made and executed a deed of reconveyance thereof to the United States, on the day of, as provided by the said Act of June 4, 1897, which said deed has been recorded in the proper County. I therefore ask that a United States patent issue to me for the said land hereby selected.

Witness my hand this day of,
190.....

.....
.....

WITNESS:

Land Office at
..... 190.....

I,, Register of the land office, do hereby certify that the land above selected, in lieu of land relinquished to the United States, is free from conflict, and that there is no adverse filing, entry, or claim thereto.....
.....

.....
Register.

Selection approved by the Commissioner of the

General Land Office, per letter "P" to Register and Receiver.

....., 190.....

.....Div. "P"

(Endorsement:) Application of

.....

P. O. ADDRESS

To Select the

Situated in

District

In lieu of the

Situated in

District

Under Act June 4, 1897 (30 Stat. 36). [83]

Selection approved by Commissioner General Land Office....., 190.....

Approved for patenting.....

Patented.....

.....,

Division "P".

Vol., Page

.....

That the said form of selection was in each and every case duly signed by the said Mollie Conklin, and in the body of said form described fully the land conveyed to the Government of the United States, but blank as to the description of the land to be selected, such description to be inserted by the party purchasing the scrip.

(f) That with said papers above described there were also drafts or a draft for the amount of the purchase price demanded by the said Mollie Conklin

et al., through the said John A. Benson, which said drafts were drawn upon R. M. Cobban at the bank where said papers were deposited and in favor of John A. Benson.

6. That all of said papers above described were deposited at said bank subject to examination and approval by the said R. M. Cobban, and with the express understanding and agreement that if approved by the said Cobban, he was authorized to insert his name as attorney in the Powers of Attorney to be delivered, and to insert the description of the land selected in the application for selection of lieu lands hereinabove described.

7. That thereupon the said R. M. Cobban did examine the said papers, and finding the title conveyed to the Government of the United States by warranty deed to have been in Mollie Conklin et al., and that the papers upon their face showed the right and title of Mollie Conklin et al. in said land transferred, and her right to make a selection of lieu lands by reason of such transfer to the United States, the said R. M. Cobban did approve [84] the said papers and did thereupon pay the said sight drafts referred to; and for the said right to make selection of lieu lands did pay to the said Mollie Conklin et al. through the said John A. Benson, the sum of \$2,560.00 for the 640 acres of land hereinabove last described, and thereupon inserted his name in the said papers, and powers of attorney, as he had a right to do in accordance with the understanding and agreement had with the said Mollie Conklin et al. through the said Benson, and inserted in the said application for

selection of lieu lands, a description of the property selected by him, Cobban, for entry of such lieu land scrip.

8. That thereupon, on April 9th, 1901, the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District hereinafter described, and thereafter, to wit, on July 22d, 1902, upon such scrip and for money paid to the United States Government, procured from the United States Government, patent for the following described land, to wit:

W. $\frac{1}{2}$ of SW. $\frac{1}{4}$, SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$, Section 32, T. 15 N., R. 4 E.;

SE. $\frac{1}{4}$ and E. $\frac{1}{2}$ of NE. $\frac{1}{4}$, Section 26, T. 13 N., R. 3 E.;

Lot 1, and SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Section 2, W. $\frac{1}{2}$ of SW. $\frac{1}{4}$, Section 1, T. 12 N., R. 3 E.;

N. $\frac{1}{2}$ of NE. $\frac{1}{4}$, Section 29, NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, Section 31, T. 15 N., R. 4 E., containing 648.02 acres, and all being situated in Boise County, Idaho, the patent for said land being numbered 4514.

9. That on the 6th day of March, 1901, the said Cobban, under like terms and conditions, and under like circumstances, [85] purchased from the said Mollie Conklin et al. through the said Benson scrip representing 563.13 acres, and described as follows, to wit:

S. $\frac{1}{2}$ of NE. $\frac{1}{4}$, N. $\frac{1}{2}$ of SE. $\frac{1}{4}$, Section 21, T. 20 S., R. 35 E.;

NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$, or Lot 4, Section 6, T. 19 S., R. 35 E.;

S. $\frac{1}{2}$ of NE. $\frac{1}{4}$, S. $\frac{1}{2}$ of NW. $\frac{1}{4}$, N. $\frac{1}{2}$ of SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, Section 11, T. 20 S., R. 34 E., all in Tulare County, State of California;

E. $\frac{1}{2}$ of SE. $\frac{1}{4}$, Sec. 25, T. 19 S., R. 34 E.; at the price of \$2,240.00.

10. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al. but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on August 20th, 1902, upon such scrip and for money paid to the United States Government, procured from the United States Government, patent for the following described land, to wit:

W. $\frac{1}{2}$ of SE. $\frac{1}{4}$, E. $\frac{1}{2}$ of SW. $\frac{1}{4}$, Lot 3 and Lot 4, Sec. 19, T. 15 N., R. 4 E.;

SE. $\frac{1}{4}$ and E. $\frac{1}{2}$ of NE. $\frac{1}{4}$, Sec. 25, T. 15 N., R. 3 E.;

Lot 1 and Lot 4 in Sec. 35, T. 12 N., R. 3 E., containing 568.43 acres, and situated in Boise County, Idaho, the patent for said land being numbered 4501.

11. That on the same date, March 6th, 1901, the said Cobban, under like terms and conditions, and under like circumstances, [86] purchased from the said Mollie Conklin et al. through the said Benson, scrip representing 200 acres of land, and described as follows, to wit:

NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Sec. 31, N. $\frac{1}{2}$ of SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Section 32, T. 17 S., R.

35 E., all in Tulare County, California, at the price of \$800.00.

12. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, herein after described, and thereafter, to wit, on Aug. 28, 1902, upon such scrip procured from the United States Government, patent for the following described land, to wit:

E. $\frac{1}{2}$ of SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Sec. 31, S. $\frac{1}{2}$ of SE. $\frac{1}{4}$, Sec. 32, T. 16 N., R. 4 E., containing 200 acres and situated in Boise County, Idaho, the patent for said land being numbered 4511.

13. That on the same date, March 6th, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 200 acres of land, and described as follows, to wit:

SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, Sec. 6, E. $\frac{1}{2}$ of NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$, or Lot 2, Sec. 7, T. 18 S., R. 34 E., in Tulare County, State of California, at the price of \$800.00.

14. That thereupon the said R. M. Cobban made application at the United States land office at Boise, Idaho, to enter, [87] and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise Dis-

trict, hereinafter described, and thereafter, to wit, on Sept. 15th, 1902, upon such scrip procured from the United States Government patent for the following described land, to wit:

SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Sec. 31, SW. $\frac{1}{4}$, Section 32, in T. 16 N., R. 4 E., containing 200 acres and situated in Boise County, Idaho, the patent for said land being numbered 4513.

15. On March 12th, 1901, the said R. M. Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 160 acres of land, and described as follows, to wit:

SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, W. $\frac{1}{2}$ of SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, Section 26, T. 20 S., R. 35 E., Tulare County, California, at the price of \$640.00.

16. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in Boise District, hereinafter described, and thereafter, to wit, on Aug. 28, 1902, upon such scrip procured from the United States Government patent for the following described land, to wit:

SW. $\frac{1}{4}$ of Section 28 T. 16 N., R. 4 E., containing 160 acres and situated in Boise County, Idaho, the patent for said land being numbered 4512.

17. That on March 12th, 1901, the said R. M. Cobban, under like terms and conditions, and under like circumstances, [88] purchased from the said

Mollie Conklin et al., through the said Benson, scrip representing 160 acres of land, and described as follows, to wit:

N. $\frac{1}{2}$ of SW. $\frac{1}{4}$, SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, of Sec. 23, T. 20 S., R. 35 E., in Tulare County, California, at the price of \$640.00.

18. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Aug. 20th, 1902, upon such scrip and for money paid to the United States Government, procured from the United States Government patent for the following described land, to wit:

SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Sec. 29, T. 16 N., R. 4 E.;

Lot 4 and the S. $\frac{1}{2}$ of NW. $\frac{1}{4}$, Sec. 4, T. 15 N., R. 4 E., containing 165.39 acres and situated in Boise County, Idaho, the patent for said land being numbered 4507.

19. That on April 12, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 40.02 acres of land, and described as follows, to wit:

NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$, or Lot 3, Sec. 3, T. 20 S., R. 35 E., in Tulare County, California, at the price of \$160.00.

20. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise,

Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, [89] under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Aug. 20, 1902, upon such scrip and for money paid to the United States Government, procured from the United States Government, patent for the following described land, to wit:

Lot No. 1, Sec. 6, T. 15 N., R. 4 E., containing 44.94 acres situated in Boise County, Idaho, the patent for said land being numbered 4510.

21. That on the same date, April 12, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 40 acres of land, and described as follows, to wit:

SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$, Sec. 3, T. 20 S., R. 35 E., in Tulare County, California, at the price of \$160.00.

22. That thereupon, the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Sept. 15, 1902, upon such scrip, and for money paid to the United States Government, procured from the United States Government, patent for the following described land, to wit:

Lot 2, Sec. 6, T. 15 N., R. 4 E., containing 44.42

acres and situated in Boise County, Idaho, the patent for the said land being numbered 4509.

23. That on the same date, April 12th, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 40 acres of land, [90] and described as follows, to wit:

SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, of Section 15, T. 20. R., R. 35 E., in Tulare County, California, at the price of \$160.00.

24. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin, but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Aug. 20th, 1902, upon such scrip, and for money paid to the United States Government, procured from the United States Government, patent for the following described land, to wit:

Lot 3, Sec. 5, T. 15 N., R. 4 E., containing 45.27 acres, and situated in Boise County, Idaho, the patent for the said land being numbered 4508.

25. That on the said date, April 12, 1901, the said Cobban, under like terms and conditions and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 40 acres of land, and described as follows, to wit:

SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Sec. 3, T. 20 S., R. 35 E., situated in Tulare County, California, at the price of \$160.00.

26. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Aug. 28th, 1902, upon such scrip and for money paid to the United States Government, procured from the United States Government, patent [91] for the following described land, to wit:

Lot 4 in Sec. 5, T. 15 N., R. 4 E., containing 45.22 acres, and situated in Boise County, Idaho, the patent for said land being numbered 4502.

27. That on the same date, Apr. 12, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 40 acres of land, and described as follows, to wit:

SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of Sec. 4, T. 20 S., R. 35 E., in Tulare County, California, at the price of \$160.00.

28. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on the 20th day of August, 1902, upon such scrip and for money paid to the United States Government, procured from the United States Government, patent for the

following described land, to wit:

Lot 2, in Sec. 5, T. 15 N., R. 4 E., containing 45.31 acres and situated in Boise County, Idaho, the patent for said land being numbered 4503.

29. That on June 24, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 80.37 acres of land, and described as follows:

NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, of Sec. 15, T. 18 S., R. 34 E.; and

NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ or Lot 1, Sec. 4, T. 20 S., R. 35 E.,
[92] all in Tulare County, California, at the price of \$321.16.

30. That thereupon the said R. M. Cobban made application at the United States land office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Sept. 15, 1902, upon such scrip, procured from the United States Government, patent for the following described land, to wit:

SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Sec. 19, T. 13 N., R. 5 E., and SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Sec. 19, T. 13 N., R. 5 E., containing 80 acres and situated in Boise County, Idaho, the patents for said land being numbered 4784 and 4778, respectively.

31. That on April 12, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 200

acres of land, and described as follows, to wit:

S. $\frac{1}{2}$ of SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, S. $\frac{1}{2}$ of SW. $\frac{1}{4}$, Sec. 14, T. 17 S., R. 34 E., in Tulare County, California, at the price of \$850.25.

32. That thereupon the said R. M. Cobban made application at the United States land office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on September 15, 1902, upon such scrip, procured from the United States Government, patent for the following described land, to wit:

SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, S. $\frac{1}{2}$ of SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$, Section 5, T. 15 N., R. 4 E., [93] containing 200 acres, and situated in Boise County, Idaho, the patent for said land being numbered 4826.

33. That on the same date, April 12, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 400 acres of land, and described as follows, to wit:

S. $\frac{1}{2}$ of NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Sec. 33, N. $\frac{1}{2}$ of NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Sec. 34, T. 17 S., R. 35 E., and

E. $\frac{1}{2}$ of NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$, Sec. 22, T. 20 S., R. 35 E., in Tulare County, California, at the price of \$1,700.00.

34. That thereupon the said R. M. Cobban made application at the United States Land Office at

Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Sept. 15, 1902, upon such scrip, procured from the United States Government, patent for the following described land, to wit:

S. $\frac{1}{4}$ of SE. $\frac{1}{2}$, SE. $\frac{1}{2}$ of SW. $\frac{1}{4}$, Sec. 26, T. 16 N., R. 4 E., and

NW. $\frac{1}{4}$, N. $\frac{1}{2}$ of SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$, Sec. 26, T. 16 N., R. 4 E., containing 400 acres, and situated in Boise County, Idaho, the patents for said land being numbered 4777 and 4776 respectively.

35. That on July 12, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased [94] from the said Mollie Conklin et al., through the said Benson, scrip representing 640 acres of land, and described as follows, to wit:

N. $\frac{1}{2}$ of NE. $\frac{1}{4}$, Sec. 9, SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$, N. $\frac{1}{2}$ of SW. $\frac{1}{4}$, Sec. 15, SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$, Sec. 16, N. $\frac{1}{2}$ of NE. $\frac{1}{4}$, E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of Sec. 22, all in T. 17 S., R. 35 E., Inyo County, California, at the price of \$2,720.00.

36. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, herein-

after described, and thereafter, to wit, on Sept. 15, 1902, upon such scrip, procured from the United States Government, patent for the following described land, to wit:

N. $\frac{1}{2}$ of NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, NW. $\frac{1}{4}$, N. $\frac{1}{2}$ of SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, Section 17, T. 16N., R. 4 E.;

NW. $\frac{1}{4}$, N. $\frac{1}{2}$ of NE. $\frac{1}{4}$, Section 35, T. 16 N., R. 4 E., containing 640 acres and situated in Boise County, Idaho, the patent for the said land being numbered 4774.

37. That on July 20, 1901, the said R. M. Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said John A. Benson, scrip representing 40 acres of land, and described as follows, to wit:

SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, Sec. 13, T. 18 S., R. 34 E., in Tulare County, California, [95] at the price of \$170.00.

38. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Sept. 15, 1902, upon such scrip, procured from the United States Government patent for the following described land, to wit:

SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of Sec. 29, T. 16 N., R. 5 E., containing 40 acres and situated in Boise County,

Idaho, the patent for the said land being numbered 4785.

39. That on the same date, July 20, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 40 acres of land, and described as follows, to wit:

NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Sec. 13, T. 18 S., R. 34 E., in Tulare County, California, for the price of \$170.00.

40. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Sept. 15, 1902, procured from the United States Government, patent for the following described land, to wit:

NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$, Sec. 7, T. 13 N., R. 5 E., [96] containing 40 acres and situated in Boise County, Idaho, the patent for the said land being numbered 4780.

41. That on the same date, July 20th, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 40 acres of land, and described as follows, to wit:

SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of Sec. 10, T. 20 S., R. 35 E., in Tulare County, California, at the price of \$170.00.

42. That thereupon the said R. M. Cobban made

application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Sept. 15, 1902, upon such scrip, procured from the United States Government, patent for the following described land, to wit:

SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$, Sec. 7, T. 13 N., R. 5 E., containing 40 acres, and situated in Boise County, Idaho, the patent for said land being numbered 4773.

43. That on July 23, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 160 acres of land, and described as follows, to wit:

NW. $\frac{1}{4}$ of Sec. 23, T. 20 S., R. 35 E., Tulare County, California, at the price of \$680.00. [97]

44. That thereupon, the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Aug. 20th, 1902, upon such scrip, procured from the United States Government patent for the following described land, to wit:

NW. $\frac{1}{4}$ of Sec. 25, T. 16 N., R. 4 E., containing 160 acres and situated in Boise County, Idaho, the patent for the said land being numbered 4775.

45. That in the year 1901, pursuant to the said powers of attorney hereinabove referred to, and the action of the said R. M. Cobban taken thereunder, and pursuant to the rights conveyed and transferred to the said R. M. Cobban by the said Mollie Conklin et al., the said R. M. Cobban, by various deeds transferred and conveyed to the said E. B. Weirick, trustee, of Silver Bow County, Montana, all of the property hereinabove described as having been patented by the United States of America in the name of Mollie Conklin et al., but for the use of the said R. M. Cobban and his associates.

46. That in the said purchase of the said scrip, and in said selections of lieu lands, and in the patenting of the same, and in the transfer of the said property to the said E. B. Weirick, trustee, the said Payette Lumber and Manufacturing Company did not have, nor did anybody in any manner interested in the said Payette Lumber and Manufacturing Company have, nor did any person or persons representing or purporting to represent said company have, any right, title, interest or claim whatsoever, but said action and all of said actions and [98] all of said proceedings were had and taken for the sole and only use and benefit of the said R. M. Cobban, E. B. Weirick and their associates, residents and citizens of the State of Montana.

46. That during the progress of the application for patent for said land by the said R. M. Cobban, and before the transfer thereof to the said E. B. Weirick, trustee, the United States Land Office called upon the said R. M. Cobban, from time to time, for

special authority in the matter of taking certain steps and proceedings in such application, and that thereupon the said R. M. Cobban procured to be written a form of power of attorney to cover the exact requirements of the land office, and to be printed in said form his own name as attorney in fact, and thereupon forwarded the said special powers of attorney to the said Mollie Conklin, through her agent, John A. Benson, and thereupon, the said powers of attorney, with the name of the said R. M. Cobban inserted therein, were by the said Mollie Conklin, duly executed, acknowledged and delivered to the said R. M. Cobban through the said John A. Benson, and that upon the said powers of attorney so executed, acknowledged and delivered by the said Mollie Conklin, in addition to the Powers of Attorney theretofore executed and delivered by her, the Government acted in issuing patents in the name of Mollie Conklin et al.

47. That thereafter, and after patents had been issued by the United States Government for all of said lands hereinabove described, the said E. B. Weirick, trustee, for a valuable consideration then and there paid to him, sold and transferred all of said described property to Payette Lumber and Manufacturing Company by several deeds of warranty, which said deeds were each duly recorded in the office of the county clerk and recorder [99] of Boise County, Idaho.

48. That at no time prior to the execution of the said deeds by the said E. B. Weirick, trustee, and at no time prior to the sale of the said property by

the said E. B. Weirick, trustee, to the said Payette Lumber & Manufacturing Company, did the said E. B. Weirick, trustee, or the said R. M. Cobban, or any person or persons whomsoever represented by the said R. M. Cobban, or the said E. B. Weirick, trustee, have any knowledge, notice or suggestion of any kind or character whatsoever that Mollie Conklin in any manner, or at all, questioned any of her acts, or proceedings hereinbefore recited, or any of the powers of attorney or other instruments signed, executed, acknowledged and delivered by her, or any of the acts or transactions had on her behalf by or through the said John A. Benson, but that the said E. B. Weirick, trustee, and the parties represented by him, had relied upon the said powers of attorney executed, acknowledged and delivered by the said Mollie Conklin, and the acts and proceedings had by the said Mollie Conklin, above recited, and the payments of money for her benefit to the said John A. Benson and in all respects believed and had a right to believe that the said Mollie Conklin had parted with and intended to part with all her right, title and interest in and to the land selected under said lieu land scrip purchased by the said R. M. Cobban in the manner and from hereinabove stated. And these defendants did not have, nor did either of them have, nor did any person or persons represented by these defendants, or either of them, have knowledge or notice of any kind or character of any fraud or attempted fraud on the part of any person or persons whomsoever having been perpetrated, or attempted to be perpetrated upon the said Mollie

[100] Conklin with reference to said lands or any part or portion thereof.

49. That in the procuring of said lieu land scrip and in making the selections of land under such scrip, and in the procuring of United States Patent for said land, the said R. M. Cobban and his associates expended large sums of money independent of the amount actually paid to the Government for said land in the matter of locating the land, examining titles, posting notices, and taking such steps as were necessary for perfecting the title of said land to the said R. M. Cobban and his associates.

50. That the said John A. Benson at all times purported to act as agent for and with full authority from, the said Mollie Conklin, and was, as these answering defendants allege on information and belief, such agent, and that, as these defendants allege on information and belief, the said Mollie Conklin took and received the consideration paid by these answering defendants through the said John A. Benson, for the said scrip.

Wherefore, these defendants having fully answered the amended bill in equity of the said complainant, Mollie Conklin, on file herein, ask to be dismissed hence with their costs of suit herein expended.

RICHARDS & HAGA,
MCBRIDE & MCBRIDE,

Solicitors for R. M. Cobban and E. B. Weirick, Personally, and E. B. Weirick, Trustee. [101]

State of Montana,
County of Silver Bow,—ss.

R. M. Cobban, being first duly sworn, says: That he is one of the defendants filing the above and foregoing answer; that he has read the said pleading and knows the contents thereof, and that the matters and things therein stated are true of his own knowledge, except as to such matters and things as are therein stated on information and belief, and as to such matters he believes it to be true.

R. M. COBBAN.

Subscribed and sworn to before me this 20th day of November, 1909.

[Seal]

ROBT. McBRIDE,

Notary Public for the State of Montana, Residing
at Butte, Montana.

My commission expires, December 11th, 1909.

Service of the above and foregoing answer acknowledged and copy received this day of November, 1909.

.....,

Solicitors for Complainant.

[Endorsed]: Filed Nov. 22, 1909. A. L. Richardson, Clerk. [102]

[**Replication of Mollie Conklin to Answer of R. M. Cobban et al.**]

In the Circuit Court of the United States, District of Idaho, for the Ninth Judicial District, Central Division.

IN EQUITY—CONSOLIDATED No. 60.
MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually and also as Trustee, PAYETTE LUMBER AND MANUFACTURING COMPANY, a Corporation, JOHN DOE, MARY DOE, RICHARD ROE, and THOMAS ROE,

Defendants.

REPLICATION TO ANSWER OF THE DEFENDANTS, R. M. COBBAN, E. B. WEIRICK, PERSONALLY AND E. B. WEIRICK, TRUSTEE, TO THE COMPLAINANT'S BILL OF COMPLAINT.

This replicant, Mollie Conklin, saving and reserving to herself all and all manner of advantages of exceptions which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendants R. M. Cobban, E. B. Weirick, personally and E. B. Weirick, trustee, for replication thereunto saith; that she does and will aver, maintain and prove her said Bill of Complaint to be true, certain and sufficient in law to be answered unto by the said defendants; and that the

answer of said defendants is very uncertain, evasive and insufficient in law to be replied thereunto by this replicant; without that, that any other matter or thing in the said answer contains materially or effectually in law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true, all of which matter and things this replicant is [103] ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays as in her said Bill she has already prayed.

N. E. CONKLIN,

Residence Berkeley, California,

WM. B. DAVIDSON,

Residence Boise, Idaho,

Solicitors and of Counsel for Complainant, Mollie Conklin.

Service of the above and foregoing replication of Mollie Conklin, complainant, accepted this 7th day of December, 1909.

McBRIDE & McBRIDE, and

RICHARDS & HAGA.

Solicitors and of Counsel for Defendants, R. M. Cobban, E. B. Weirick, Individually, and E. B. Weirick, Trustee.

[Endorsed]: Filed December 7th, 1909. A. L. Richardson, Clerk. [104]

**[Testimony Taken January 3, 1910, Before Special
Examiner McCracken.]**

*In the Circuit Court of the United States, for the
District of Idaho, Ninth Judicial District, Cen-
tral Division.*

UNITED STATES OF AMERICA, and MOLLIE
CONKLIN,

Complainants,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually and
also as Trustee, PAYETTE LUMBER &
MANUFACTURING COMPANY, a Corpo-
ration, JOHN DOE, MARY DOE, RICH-
ARD ROE, and THOMAS ROE,

Defendants.

Testimony Taken January 3, 1910, before ROBERT
M. McCRACKEN, Special Examiner.

APPEARANCES:

WM. B. DAVIDSON and N. E. CONKLIN, for
Complainant Mollie Conklin.

D. L. TIPTON, Assistant U. S. Attorney, for Com-
plainant United States of America.

J. H. RICHARDS, for Defendants Cobban and
Weirick.

ALFRED A. FRASER, for Defendants Campbell
and Benson.

JOHN J. BLAKE, for Defendant Payette Lumber
Company. [106*—2†]

*Page-number appearing at foot of page of certified Transcript of Record.

†Original page-number appearing at foot of page of Testimony as same appears in Certified Transcript of Record.

[**Testimony of Mrs. Mollie Conklin, for
Complainants.**]

Mrs. MOLLIE CONKLIN, produced as a witness for complainants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. CONKLIN.)

Q. What is your name? A. Mollie Conklin.

Q. Are you the Mollie Conklin who is the complainant or plaintiff in this case? A. Yes.

Q. Are you a widow? A. I am.

Q. What was your husband's name?

A. Alvah R. Conklin.

Q. Did you know Mrs. Patrick Reddy in her lifetime? A. Very well.

Q. Who was she?

A. She was my husband's sister.

Q. Is she now living? A. No.

Q. What was her husband's name?

A. Patrick Reddy.

Q. What relation existed between you?

(No answer.)

Q. Do you know N. E. Conklin? A. I do.

Q. Do you know Mrs. M. S. Olcese?

(No answer.)

Q. What relation exists between you and N. E. Conklin? A. He is my son.

Q. And Mrs. Olcese? A. She is my daughter.

Q. Do you know Mrs. Coleman?

A. I do. [107—3]

Q. Who was she?

(Testimony of Mrs. Mollie Conklin.)

A. She was Mrs. Reddy's daughter.

Q. Mrs. S. J. Coleman. Are you acquainted with one of the defendants in this case, John A. Benson?

A. I can't say that I am—I met him once.

Q. You met him one time, did you?

A. One time.

Q. Are you acquainted with Joseph C. Campbell?

A. Yes, slightly.

Q. Do you know the firm of Reddy, Campbell & Metson? A. Yes.

Q. The firm of Campbell & Metson? A. Yes.

Q. What is their business, if you know?

A. They are lawyers.

Q. And the place of their office is where?

A. In San Francisco.

Q. Do you know the building?

A. It was in the Crocker building; I don't know where it is now.

Q. Was that firm at any time acting as your attorneys? A. Yes.

Q. Now, during the year 1900, was the firm of Reddy, Campbell & Metson your attorneys at any time? A. Yes.

Q. And in what business—or in relation to what business? A. Law business.

Q. And what did they do for you?

A. They settled up the estate.

Mr. DAVIDSON.—Q. What estate?

A. My husband's estate. [108—4]

Mr. CONKLIN.—Q. And afterwards did the firm of Campbell & Metson act as your attorneys?

(Testimony of Mrs. Mollie Conklin.)

A. They did.

Q. Is the J. C. Campbell whom you testify as being acquainted with the same Campbell who was a member of the firm of Reddy, Campbell & Metson, and of the firm of Campbell and Metson? A. Yes.

Q. Was the firm of Reddy, Campbell & Metson the attorneys for your husband, A. R. Conklin, during his lifetime? A. They were.

Q. Have they been the attorneys for Mrs. Oleese also since the death of your husband?

A. They have.

Q. In your dealings with the firm of Campbell & Metson, in 1900, after the death of Mr. Reddy, and after the death of your husband, and the closing up of the estate, did you have any business with the firm of Campbell & Metson in 1900? A. Yes.

Q. And who in particular acted?

A. Mr. Campbell.

Q. And what business was that in relation to?

A. In relation to the Monache lands.

Q. Where are these Monache lands located?

A. Up in the Sierra Nevadas.

Q. In what country? A. Inyo and Tulare.

Q. What State? A. California.

Q. Do you own an interest in those Monache lands? A. I did. [109—5]

Mr. FRASER.—On behalf of the defendants J. C. Campbell and John A. Benson, I object to that as calling for the conclusion of the witness, and not the best evidence.

Judge RICHARDS.—The same objection on be-

(Testimony of Mrs. Mollie Conklin.)

half of R. M. Cobban and E. B. Weirick.

Mr. BLAKE.—The same objection on behalf of the Payette Lumber Company.

Mr. CONKLIN.—For the purpose of identification, I will ask that this paper, including the endorsements, be marked as Complainant's Exhibit "A," (Marked.)

Mr. CONKLIN.—I now offer in evidence a paper entitled "Order settling final account and decree of final distribution, in the matter of the estate of Alvah R. Conklin, deceased," in the Superior Court of the City and County of San Francisco, State of California, and endorsed, "Reddy, Campbell & Metson, Attorneys for Executrix, Rooms 116, 117, 118, 119, 120, 121, 122, Crocker Building, San Francisco, California," together with the certificate of the clerk, certifying that the same is a full true and correct copy of the same, with the seal attached.

Mr. FRASER.—We object to the introduction as incompetent, irrelevant, and immaterial, and it does not tend to prove title, and for the further reason that it is not authenticated in a manner which would permit it to be introduced as evidence in this action, no proper certificate of the Court being attached thereto of the presiding judge or chief magistrate. The objection is made on behalf of the defendants Campbell and Benson.

Judge RICHARDS.—The same objection on behalf of R. M. Cobban and E. B. Weirick, personally and as trustee.

Mr. BLAKE.—The same objection for the Payette Lumber Co. [110—6]

(Testimony of Mrs. Mollie Conklin.)

Mr. CONKLIN.—Q. Do you know Edward A. Reddy? A. I did.

Q. Who is he?

A. He was Mr. Reddy's brother, Mr. Patrick Reddy's.

Q. What Reddy? A. Pat Reddy.

Q. You stated that you had some business with Mr. Campbell, or in his office, in 1900, regarding the Monache lands. Will you please state what this business was, where the meeting was, and what occurred there at that time.

A. Mr. Campbell made arrangements to sell the Monache lands to Benson.

Mr. FRASER.—Q. What date was that?

A. After Mr. Reddy died. Mr. Reddy died in June—August or September, some time.

Mr. CONKLIN.—Q. The meeting was in August or September some time? A. Yes.

Q. What year? A. 1900.

Q. Where was it held?

A. In Mr. Campbell's office.

Q. Who was present, if anyone?

A. Mrs. Reddy and her daughter.

Q. What was the daughter's name?

A. Mrs. Coleman—and Benson and Campbell and my son and myself.

Q. What Mrs. Reddy? A. Mrs. Patrick Reddy.

Q. What Mrs. Coleman?

A. Her daughter, Mrs.— [111—7]

Q. What were her initials? A. S. J. Coleman.

Q. Now state what was done at that time, if anything.

(Testimony of Mrs. Mollie Conklin.)

A. Mr. Campbell made arrangements to sell the Monache lands to Benson.

Q. What were these arrangements, if you know?

A. Well, he was to sell them at first—

Mr. FRASER.—Counsel for the defendant Campbell moves to strike out that answer of the witness in which she states that Campbell made arrangements to sell the lands to Benson, for the reason that it is not responsive to the question, and calls for the conclusion of the witness, and states no facts.

Mr. CONKLIN.—Q. Just state what arrangements were made, if any.

A. Well, he made arrangements to sell the lands to Benson for \$4.00 at first, and then Benson said there was no such work about it—the abstracts and one thing and another—he asked for \$3.80, and we agreed on that, an acre.

Q. What else, if anything, did you agree on?

A. The deeds were to be drawn up and placed in escrow.

Q. By whom were the deeds to be drawn, if such an arrangement was made?

A. I suppose Campbell and Metson.

Mr. FRASER.—I object to that as a conclusion of the witness, and not responsive to the question. If you don't know, please don't state.

Mr. CONKLIN.—Just state what was done.

A. Benson was to draw up the papers.

Mr. FRASER.—Q. Who was? A. Benson.

[112—8]

Mr. CONKLIN.—Q. And then what was to be

(Testimony of Mrs. Mollie Conklin.)

done with them?

A. They were to be placed in escrow, not to be taken out until the money was put there for them.

Q. And who was to see that the deeds were placed in escrow, if anyone? A. Mr. Campbell.

Q. And how were the lands to be paid for, if you know?

A. At first we said thirty days, and then he asked for ninety; Benson asked that it be extended, that the time be extended to ninety days, and he was to pay it up entirely then.

Q. How was he to pay it?

A. He was to pay it in cash.

Q. Now, after this, what next occurred, if anything, in regard to that transaction?

A. He made two payments—

Q. No, I mean in regard to the papers.

A. They sent them up to—sent one bundle up to Mrs. Reddy's for us to sign.

Q. Who sent them up, if you know?

A. Sent from the office, she said; I didn't see anyone.

Q. Then, what was done?

A. She and I signed them.

Q. Where?

A. Up at her house, the first package.

Q. Where was her house, if you recollect?

A. On Pacific Avenue, San Francisco.

Q. Who was present at the time you signed those papers, if anyone?

A. Nobody; her daughter came in and out of the room while we were signing them.

(Testimony of Mrs. Mollie Conklin.)

Q. What is her daughter's name? [113—9]

A. Mrs. S. J. Coleman.

Q. How long after you had this meeting in Mr. Campbell's office did this occur, if you know?

A. I couldn't tell—I suppose a couple of months maybe, or a month or so; I couldn't tell the time exactly.

Q. When was the next time, if there was another time, that you signed any papers?

A. They sent down to where I was living, the Hotel Savoy, they sent another package to be signed.

Q. Who sent them there if you know?

A. They sent them up from the office; one of the office boys brought them.

Q. What office? A. Campbell & Metson's.

Q. One of whose office boys brought them?

A. Campbell & Metson's—one of their boys.

Q. You knew him to be from their office, did you?

A. Yes, because I had seen him there in the office.

Q. Who was present, if anyone, when you signed those papers? A. My daughter.

Q. What is your daughter's name?

A. Mrs. M. Olcese.

Q. Then, what was done with those papers, after you signed them? A. The boy came for them.

Q. What boy? A. One of the office boys.

Q. What office boy?

A. One of Campbell & Metson's.

Q. Did you ever see those papers after that?

A. No. [114—10]

Q. Did you ever see the papers after you signed

(Testimony of Mrs. Mollie Conklin.)

them at Mrs. Reddy's rooms? A. No.

Q. At the time that Mrs. Reddy was signing these documents did you discuss what they were?

A. No.

Mr. FRASER.—I object to that as incompetent, irrelevant, and immaterial, and not binding upon the defendants Campbell and Benson, in the absence of a showing that either one of them was present at the time.

WITNESS.—No, I made the remark to her that there was no need of reading them over, as Mr. Campbell wouldn't send up anything that wasn't proper, and she was quite indignant and said "of course he wouldn't."

Mr. FRASER.—On behalf of the defendants Campbell and Benson I move to strike out the last statement of the witness as hearsay, immaterial and irrelevant, and a statement not made in the presence of either of the defendants.

Mr. CONKLIN.—Q. At the time you were signing these documents at Mrs. Reddy's house, what were you intending to sign?

Mr. FRASER.—I object to that as incompetent, irrelevant, and immaterial, and calling for the conclusion and state of mind of the witness, and not any fact. This objection is made on behalf of the defendants Campbell and Benson.

WITNESS.—We supposed them to be deeds.

Mr. CONKLIN.—That is not answering the question. Don't say you supposed. What were you intending to sign?

A. Deeds.

(Testimony of Mrs. Mollie Conklin.)

A. Deeds for what? A. The Monache lands.

Q. Were those the same deeds that—or did you believe and [115—11] intend to sign deeds that were to be placed in escrow, in pursuance of the agreement you had made in Campbell's office?

A. Yes, they were to be placed in escrow.

Q. And did Mrs. Reddy make any statements at that time, and in your presence, in reference to those documents, as to their character?

Mr. FRASER.—I object to that, on behalf of the defendants Campbell and Benson, for the reason that any statement made by Mrs. Reddy in the absence of the defendants would not be evidence against them in this action.

A. No.

Q. (By Mr. CONKLIN.) Did she state at that time what she believed those documents to be?

Mr. FRASER.—That is objected to as incompetent, irrelevant, and immaterial, the belief of the party not being evidence or statement of any fact, on behalf of the defendants Campbell and Benson.

Mr. BLAKE.—The same objection for the Payette Lumber Co.

WITNESS.—No; when I made the remark to her that there was no need of us looking over them, she said of course there wasn't, that Campbell wouldn't send anything up that wasn't proper for us to sign; she said that Campbell wouldn't send anything up that wasn't perfectly right and proper for us to sign.

Judge RICHARDS.—Q. Who was it that said that? A. Mrs. Reddy.

(Testimony of Mrs. Mollie Conklin.)

Mr. CONKLIN.—Q. At the time you were signing those papers at Mrs. Reddy's, and at the time you signed those papers at your rooms in the Hotel Savoy, you state that you did not look them over. I will now ask you if you relied upon the fact that Mr. Campbell [116—12] had sent these documents to you, and believed them to be the documents you had therefore agreed upon?

Mr. FRASER.—That is objected to, on behalf of the defendants Campbell and Benson, first, as leading, second, as calling for nothing but a conclusion of the witness, and no statement of fact.

Mr. BLAKE.—The same objection on behalf of the Payette Lumber Company, and the further objection that it is self-serving.

WITNESS.—I certainly did.

Mr. CONKLIN.—Q. At the time you signed those instruments in the house of Mrs. Reddy, you say you didn't look the same over, but that you signed them? Why did you do that?

Mr. FRASER.—That is objected to as incompetent, irrelevant and immaterial, and a self-serving declaration, and calls for no statement of fact, but the conclusion of the witness.

Mr. BLAKE.—The same objection.

Mr. FRASER.—My objections, without repeating it, are on behalf of the defendants Campbell and Benson.

WITNESS.—Because I relied on Mr. Campbell sending us nothing but what was proper to sign.

Mr. CONKLIN.—Had Mr. Campbell or Mr. Benson ever told you that they would send you any

(Testimony of Mrs. Mollie Conklin.)

papers other than the ones you had agreed upon at the meeting in Campbell's office, in 1900, at which this agreement or this negotiation was entered into? Did they ever tell you, or any of them, that they would send you other papers than those you had agreed upon at that time—the deeds?

A. No; deeds, I understood them.

Q. Had there been, at that meeting, or at any time afterwards, or before, or ever, any statement that they would send [117—13] to you any other papers than deeds to the Monache lands?

A. Never said anything.

Q. That can be answered by yes or no.

A. They were to send deeds up.

Q. That can be answered by yes or no. A. No.

Q. What was the understanding at that meeting as to whom you were selling the lands to?

Mr. FRASER.—That is objected to as incompetent, irrelevant and immaterial, calling for the conclusion of the witness, and stating no fact.

WITNESS.—I was selling them to Benson.

Mr. CONKLIN.—Q. At that time was anything said whatever in regard to releasing these lands to the Government of the United States? A. No.

Q. Did you ever hear of such question?

A. No, I didn't.

Q. Was it stated to you, or at that meeting, that it was necessary in order to facilitate the sale of these lands, to release these lands, these Monache lands, to the Government of the United States? Was a power of attorney ever mentioned at that

(Testimony of Mrs. Mollie Conklin.)

meeting? A. No.

Mr. CONKLIN.—I will withdraw that last question, Mr. Reporter.

Mr. DAVIDSON.—Q. Mrs. Conklin, at the time of the meeting in Mr. Campbell's office, was anything said by Mr. Campbell or Mr. Benson in regard to your making applications for the selection of lieu lands for the base lands you were selling at that time? [118—14] A. No.

Q. Did they or did they not at that time ask you to permit Mr. Benson to take the deeds to this base land to the Government and relinquish them?

A. No.

Mr. FRASER.—Let me suggest, Mr. Davidson, that you say at what time. Do you claim that there was only one meeting there?

Mr. DAVIDSON.—Only one meeting.

Q Mrs. Conklin, that was the only meeting you had at Mr. Campbell's office in which Mr. Campbell and Mr. Benson were present, the meeting you just testified to?

A. That was the only meeting I was there at.

Q. That was the only meeting at which you were ever present? A. Yes.

Q. Now, at the time—how many times did you sign papers sent you by Mr. Benson or Mr. Campbell, or Campbell, Metson & Campbell, in regard to the Monache lands? A. Twice.

Q. Just the two times? A. Yes.

Q. Now, you say the first lot of papers was signed at the home of Mrs. Reddy? A. Mrs. Reddy.

(Testimony of Mrs. Mollie Conklin.)

Q. Did you at that time go before any notary public, for the purpose of acknowledging any papers that you signed at that time? A. No, sir.

Q. Was any notary public present at Mrs. Reddy's house at the time you were signing those papers?

A. No.

Q. Where were those papers left after you signed them? [119—15]

A. We left them on the table; when I left they were lying there.

Q. That would be in Mrs. Reddy's home?

A. Yes.

Q. How long after signing the papers at Mrs. Reddy's was it before you signed the papers at your rooms in the Savoy Hotel?

A. It wasn't very long after—maybe a day or two.

Q. Now, at the time of the signing of the papers in your room at the Savoy Hotel was any notary public present at that time? A. No, sir.

Q. Did you at that time, or at any other time, acknowledge before any notary public any paper that you signed at that time? A. No, sir.

Q. Did you ever, before any notary public, or any other officer authorized to take acknowledgments of conveyance to real estate, acknowledge the execution of any deeds relinquishing the Monache lands, or any part of the Monache lands to the United States Government? A. No.

Q. Did you, at the time of signing the papers at Mrs. Reddy's or at the time of signing the papers at your rooms at the Hotel Savoy, or at any

(Testimony of Mrs. Mollie Conklin.)

other time, acknowledge any powers of attorney authorizing any person to select lieu lands in your behalf for the Monache lands relinquished?

A. No.

Q. Did you ever, at any time, knowingly sign any power of attorney authorizing any person to convey any lieu lands selected for the Monache lands, relinquished and transferred to the United States of America? A. No.

Q. Now, Mrs. Conklin, you say the papers that you signed [120—16] at the Hotel Savoy were sent there through an office boy from the office of Campbell, Metson & Campbell? A. Yes.

Q. Was that boy that brought them known to you personally at that time?

A. I had seen him in their office.

Q. When you had seen him in their office what was he doing? A. He was just an office boy.

Q. Was he working there at that time, if you know?

A. I guess he was working there; I saw him there.

Q. Did you say they sent a man from the office of Campbell, Metson & Campbell, and took the papers from your room in the Hotel Savoy? A. Yes.

Q. Was that the same day, or afterwards?

A. I think it must have been the same day.

Q. Did you make an examination of the papers sent you by Campbell, Metson & Campbell, to your rooms at the Hotel Savoy? A. I did not.

Q. You may state why you signed those papers sent you at that time, without examining them.

Mr. FRASER.—That is objected to as incompe-

(Testimony of Mrs. Mollie Conklin.)

tent, irrelevant, and immaterial, and calling for a conclusion of the witness.

WITNESS.—Because I thought they wouldn't send anything but what was proper for me to sign.

Mr. DAVIDSON.—Q. Were you, at that time, relying upon the acts of your attorney, Mr. J. C. Campbell, in regard to the preparation of proper instruments for the purpose of conveying the Monache lands to John A. Benson, under the agreement had at the meeting to which you have testified?

Mr. FRASER.—Objected to as incompetent, irrelevant, and [121—17] immaterial, calling for the conclusion of the witness, and also for the further reason that there is no evidence that Mr. Campbell was her attorney at this time.

Mr. BLAKE.—The same objection, and the further objection that it is self-serving.

Q. (Last question repeated.)

A. I certainly was.

Q. Now, Mrs. Conklin, when did you first learn, if you did learn, that the Monache lands, or any part of them, had been conveyed to the United States Government?

A. It was quite a long time after. My son wrote to me. He said he—

Q. Yes. Do not tell what he said. From whom did you receive your first information as to the lands having been conveyed to the United States Government? A. My son.

Q. Now, previous to the time you learned of the conveyance to the Government, had you any conversation with Mr. Campbell, or with any member of the

(Testimony of Mrs. Mollie Conklin.)

firm of Campbell, Metson & Campbell, in regard to the payments to be made for the lands sold to Mr. Benson? A. They made two payments.

Q. About when did they make the first payment?

A. I couldn't say.

Q. How much was it, Mrs. Conklin?

A. They made two. One was for \$1250.00 and the other I think was \$1500.00.

Q. These payments were made to you by Campbell, Metson & Campbell?

A. Yes, it was sent from the firm.

Mr. FRASER.—I object to that. I don't wish to it in order—Which member of the firm of Campbell, Metson and Campbell? [122—18]

Mr. DAVIDSON.—Q. Mrs. Conklin, who made the payment that you testified to receiving at the office of Campbell, Metson & Campbell?

A. They sent for me to come down to the office; said they had some money for me.

Q. Who made the payment? Who handed you the money? A. I think it was Milton Bernard.

Q. Who was Milton Bernard?

A. He was an office boy, clerk there.

Q. For whom was he working?

A. He was working for Reddy, Campbell & Metson.

Q. Do you remember who made you the other payment?

A. I don't remember whether it was Milton Bernard or not.

Q. Was anyone present with you at the time you received the payments?

A. My daughter was with me once.

(Testimony of Mrs. Mollie Conklin.)

Q. Was anyone present at the other time?

A. Yes, but I don't remember who. I think Mrs. Reddy was with me once, but I am not positive.

Q. Now, were these payments made, if you remember, within ninety days after you signed the papers at your rooms and at Mrs. Reddy's?

A. I am not positive about that. I know after the last payment they told me that there would soon be another large payment.

Q. Did you ever ask Mr. Campbell, or any member of the firm of Campbell, Metson & Campbell as to where the papers signed by you were put in escrow, or where they were kept?

A. Yes, I went down once, Mrs. Reddy and I, when my son wrote that he heard they were not in escrow, heard something about it; she went down with me, and we saw Mr. Campbell, and he said they were in escrow; he was very indignant because we asked him. [123—19]

Q. At that time Mr. Campbell stated to you that the papers were in escrow?

A. Yes, and couldn't be taken out without the money being presented there for them.

Q. Mrs. Conklin, who did you—to whom were you selling the Monache lands under the agreement you had in the office of Campbell, Metson & Campbell, at the time in August or September, under the agreement made at that time?

Mr. FRASER.—That is objected to as incompetent, irrelevant and immaterial, and not the best evidence; the agreement itself is the best evidence to whom the sale was made.

(Testimony of Mrs. Mollie Conklin.)

Judge RICHARDS.—Mr. Davidson, can't it be understood that all of these objections go to all of the defendants, that an objection for any one is an objection for all?

Mr. DAVIDSON.—That is satisfactory.

Q. (Last question repeated by stenographer.)

WITNESS.—Mr. Benson.

Mr. DAVIDSON.—Q. Which Benson?

A. I don't know what his other name is.

Q. Do you remember whether it was John A. Benson?
A. John A. Benson, yes.

Q. Mrs. Conklin, how long after the agreement of August or September, 1900, did Mr. J. C. Campbell continue to act as your attorney in the matter of the sale of the Monache lands?

A. I think till after we found out the papers were not in escrow, my son, I think, took it into his own hands.

Q. (Last question read by stenographer, at the request of Mr. Davidson.)

A. It was some time after, I think; I can't tell positively.

Q. Did you afterwards withdraw the matter from the hands of Mr. Campbell?
A. Yes. [124—20]

Q. Who then acted as your attorney?

A. My son.

Q. N. E. Conklin?
A. N. E. Conklin.

Q. Now, Mrs. Conklin, who was to place the deeds to the Monache lands in escrow, under the agreement had at the office of Campbell, at the meeting in August or September?

A. I supposed Campbell and Benson.

(Testimony of Mrs. Mollie Conklin.)

Q. Was anything said—did you understand at that time that Mr. Benson was to place those deeds in escrow? A. Yes.

Mr. FRASER.—I object to that as calling for the conclusion of the witness and a statement of no fact.

WITNESS.—Campbell and Benson.

Mr. DAVIDSON.—Who, if anyone, was to see, under the terms of that agreement, that the deeds to be prepared and signed by you were to be placed in escrow?

A. I supposed Mr. Campbell.

Mr. FRASER.—I object to that, and move to strike it out as not responsive to the question, and calling for the conclusion of the witness, and as a statement of no fact.

Mr. DAVIDSON.—Q. Mrs. Conklin, you will be careful in answering not to say—if you know a fact positively, to leave out the word “suppose,” if you are testifying to a positive fact.

WITNESS.—It wasn't a fact; he didn't put them in escrow.

Mr. DAVIDSON.—Q. Well, but who was to put the deeds in escrow, or see that they were put in escrow? A. He was.

Q. Who? A. Mr. Campbell. [125—21]

Q. Mrs. Conklin, how long did you continue to stay in the City of San Francisco, California, after the time that you signed the papers at your rooms, and also at the house of Mrs. Reddy, when the agreement was made?

A. I left somewhere about the 1st of December, 1st or 2d of December, 1900.

(Testimony of Mrs. Mollie Conklin.)

Q. Where did you go at that time?

A. Bakersfield.

Q. What State? A. California.

Q. How long did you stay in Bakersfield?

A. I stayed there all winter.

Q. When did you next return to San Francisco?

A. It was late the next summer.

Q. About what month, if you remember?

A. It might be August or September.

Q. 1901? A. 1901.

Q. Now, Mrs. Conklin, were you in the City or County of San Francisco between the 1st or 2d of December, 1900, and say the month—the 1st of August, 1901? A. No.

Q. During all that period you were continuously absent from the City and County of San Francisco, State of California? A. I was.

Q. Have you ever received any payment on the purchase price of the Monache lands other than the two payments you have testified to?

A. No, no others.

Mr. DAVIDSON.—I will have this paper marked Complainant's Exhibit "B," for identification. (Marked.) [126—22]

Mr. DAVIDSON.—Q. Mrs. Conklin, I hand you a paper marked Complainant's Ex. "B.," for identification, being an account between Mollie Conklin, executrix of the estate of Alvah Russel Conklin, deceased, and the firm of Reddy, Campbell & Metson. You may examine this paper and state, if you know, what it is, and whose signature it is that marks the bill as paid. A. Yes, I do.

(Testimony of Mrs. Mollie Conklin.)

Q. Did you know at that time a Mr. Jacobs?

A. Yes.

Q. What position did he occupy, if you know, at that time, with the firm of Reddy, Campbell & Metson?

A. He was the chief clerk.

Mr. DAVIDSON.—We offer in evidence, as Complainant's Exhibit "B," the instrument identified by the witness.

Mr. FRASER.—I object to it as incompetent, irrelevant and immaterial, not tending to prove any of the allegations of the complaint.

Mr. DAVIDSON.—Q. Did you, at the time of receiving that, pay to the firm of Reddy, Campbell & Metson the balance of \$256.90 shown by that?

A. I did.

Q. And that is a receipted bill for the money you paid them at that time?

A. Yes.

Mr. DAVIDSON.—At this time the complainants demand of the defendants the production of the original powers of attorney as set forth and described in the bill of complaint of the complainants Mollie Conklin and the United States of America, and as referred to in the separate answers of each of the defendants. [127—23]

Mr. BLAKE.—Do you know how many of those there are?

Mr. DAVIDSON.—We ask for the production of eleven powers of attorney, containing a description of the base lands surrendered to the United States in lieu of which the lands involved in this action were selected in the name of the complainant Mollie Conklin and Emily M. Reddy and Edward A. Reddy,

(Testimony of Mrs. Mollie Conklin.)

executrix and executor of the estate of Patrick Reddy, deceased.

Mr. BLAKE.—There are only ten of them there (handing papers to Mr. Davidson).

Mr. DAVIDSON.—Do you know whether or not you claim another power of attorney, Mr. Blake?

Mr. BLAKE.—I wouldn't know, without checking up.

Mr. DAVIDSON.—There are eleven on the records.

Mr. BLAKE.—That is probably lost or misplaced.

Mr. DAVIDSON.—We have certified copies here. We just want to examine these. Suppose we do this: Submit to the witness the originals and have them marked, with the understanding that when they have been marked and put in, the certified copies may be substituted.

Mr. FRASER.—I think, Mr. Davidson, you had better mark the certified copies, because you will get the record rather mixed up if you don't. You can interrogate the witness on the originals and then offer in evidence the certified copies.

Mr. DAVIDSON.—Very well. We will have those marked as Complainant's Exhibit "C," to the end.

(Marked Complainant's Ex. "6" to Complainant's Ex. "M.," inclusive.)

Mr. DAVIDSON.—We offer in evidence, as Complainant's Exhibit "C," the certified copy of the original power of attorney, certified by the recorder. We offer these powers of [128—24] attorney—I want this statement to go in in connection with the offer—not for the purpose of proving that they are

(Testimony of Mrs. Mollie Conklin.)

valid powers of attorney, but for the purpose of proving that they are forged and fraudulent powers of attorney, that they were not knowingly signed by the complainant Mollie Conklin, that they were not acknowledged by her, and that they are instruments that were altered and changed after delivery and signing by Mollie Conklin.

Judge RICHARDS.—You say you offer these for that purpose?

Mr. DAVIDSON.—For that purpose.

Judge RICHARDS.—We object to that, because the instruments don't show anything of that kind.

Mr. FRASER.—We object to the introduction of the exhibits, under the statement of counsel, as incompetent irrelevant and immaterial, and as improper to introduce an instrument for that purpose, or confined to any one purpose, because the instrument speaks for itself, and, if introduced in evidence, it must have such force and effect as it is legally entitled to.

Mr. DAVIDSON.—Q. Mrs. Conklin, I hand you Complainant's Exhibit "C," purporting to be a power of attorney from Mollie Conklin and Edward A. Reddy and Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, to R. N. Cobban. You may examine the same and state whether or not you ever knowingly signed this power of attorney.

Mr. FRASER.—We object to the question for the reason that the word "knowingly" is put in the question. It hasn't been proven that the witness is incompetent to understand.

WITNESS.—No, I never did.

(Testimony of Mrs. Mollie Conklin.)

Mr. FRASER.—I suppose that answers the question that she never “knowingly” did. [129—25]

Mr. DAVIDSON.—Yes.

Q. Is that signature, “Mollie Conklin,” to that instrument your signature, Mrs. Conklin?

A. It looks like it. I wouldn’t swear to it though.

Q. Were you acquainted with the person, R. M. Cobban, of Missoula, in the county of Missoula, State of Montana, the attorney in fact mentioned in this instrument? A. No.

Q. Did you ever meet R. M. Cobban? A. No.

Q. Did you ever knowingly appoint him as your attorney in fact for any purpose?

Mr. BLAKE.—We object to the word “knowingly” in that.

Mr. FRASER.—We object to it as incompetent, irrelevant and immaterial, and move to have the answer stricken out as incompetent, irrelevant and immaterial, for the further reason that this witness hasn’t been shown to be incompetent, or not to have sufficient intelligence to know the contents of the instrument.

Mr. DAVIDSON.—Q. Mrs. Conklin, did you ever appoint R. M. Cobban, of Missoula, county of Missoula, State of Montana, your attorney in fact for any purpose?

Mr. FRASER.—That is objected to as calling for the conclusion of the witness and as incompetent, irrelevant and immaterial. The document itself is the best evidence.

WITNESS.—No.

Mr. DAVIDSON.—Q. Mrs. Conklin, did you ever receive any consideration from R. M. Cobban for

(Testimony of Mrs. Mollie Conklin.)

appointing him as your attorney in fact under this power of attorney, Complainant's Exhibit "C"? [130—26]

Judge RICHARDS.—Objected to because it does not appear that she might not have received it from someone else for his benefit.

Mr. FRASER.—And for the further reason that it doesn't require any consideration for the appointment of an attorney in fact.

WITNESS.—No.

Mr. DAVIDSON.—Q. Mrs. Conklin, I call your attention to that part of the power of attorney which reads as follows: "For value received, the receipt whereof is hereby acknowledged, this power of attorney is hereby made and declared to be irrevocable by us or otherwise." You may state whether or not you ever received any value for the execution of this power of attorney, Complainant's Exhibit "C."

Mr. FRASER.—Objected to as incompetent, irrelevant and immaterial, and for the reason that it is not necessary for a valid power of attorney that any compensation or consideration be paid.

WITNESS.—I never did.

Mr. DAVIDSON.—Q. Mrs. Conklin, the power of attorney shows on its face that it was signed, sealed and delivered in the presence of J. H. Lavenson and C. E. Glover. You may state whether or not you ever signed this instrument in the presence of those two parties just named as subscribing witnesses.

Mr. BLAKE.—Objected to as incompetent, irrelevant and immaterial, no witnesses being required.

WITNESS.—No.

(Testimony of Mrs. Mollie Conklin.)

Mr. DAVIDSON.—Q. Are you acquainted with J. H. Lavenson and C. E. Glover, or either one of them? [131—27] A. No, I never heard of them.

Q. Did you ever see either one of these parties?

A. I did not.

Q. Mrs. Conklin, where were you on the 13th day of February, 1901, the date of this power of attorney, Complainant's Exhibit "C"?

A. I was in Bakersfield.

Q. What state? A. California.

Q. Mrs. Conklin, are you acquainted with George A. Young, a notary public in and for the City and County of San Francisco, State of California?

A. No, sir.

Q. Did you ever meet George A. Young, a notary public in San Francisco?

A. No, never heard of him.

Q. You may state whether or not, on the 12th day of February, 1901, or at any other time, you ever acknowledged this instrument, Complainant's Exhibit "C," before George A. Young, a notary public in and for the City and County of San Francisco, State of California. A. I never did.

Judge RICHARDS.—That is objected to as incompetent, irrelevant and immaterial, it not being necessary to the validity of a power of attorney that it should be acknowledged.

WITNESS.—I never did.

Mr. DAVIDSON.—Q. Where were you on the 12th day of February, 1901?

A. I was in Bakersfield.

Q. California? A. California. [132—28]

(Testimony of Mrs. Mollie Conklin.)

Q. Were you, on that date—at any time on that date—in the City and County of San Francisco, State of California? A. No, sir.

Mr. FRASER.—Do you desire to have the same line of questions and answers apply to all of these exhibits, instead of repeating them?

Mr. DAVIDSON.—You don't want to deprive us of practice, do you?

Mr. FRASER.—We can stipulate that the answers of the witness would be the same as to the others, when you get one of these full enough.

Mr. DAVIDSON.—We offer in evidence Complainant's Exhibit "D," a certified copy of power of attorney.

Judge RICHARDS.—He objects to it, under the statement of counsel, setting forth the purpose for which it is offered.

Mr. DAVIDSON.—Then it is understood that all of the offers of powers of attorney are for the same purposes and subject to the same objections.

Mr. DAVIDSON.—I will withdraw that for the present, and take this up.

Q. Mrs. Conklin, did you ever authorize R. N. Cobban, of Missoula, County of Missoula, State of Montana, or any other person, to insert the name of R. M. Cobban as attorney in fact under the power of attorney, Complainant's Exhibit "C"? A. No.

Q. Did you ever authorize the defendant John A. Benson to insert the name of R. M. Cobban, or any other person, as the attorney in fact of any powers of attorney signed by you, knowingly, or otherwise?

(Testimony of Mrs. Mollie Conklin.)

A. No.

Mr. DAVIDSON.—We now offer Exhibit “D,” for the same purpose as stated heretofore. [133—29]

Judge RICHARDS.—We object to it, under the purpose stated by counsel for which the instrument is offered, for the reason that the offer cannot limit and restrict the purpose of testimony in that manner.

Mr. DAVIDSON.—Q. Mrs. Conklin, I hand you power of attorney, marked Complainant’s Exhibit “D.” You may examine the same and state whether or not you ever signed that instrument.

A. No, I did not.

Q. You say you never signed it?

A. Not to my knowledge.

Q. You may examine the signature, “Mollie Conklin,” to that instrument, and state whether or not that is your signature.

A. It looks like it, but I wouldn’t swear it was.

Q. If that is your signature, Mrs. Conklin, did you knowingly sign the same? A. I did not.

Q. Did you sign the instrument?

A. Not knowingly. I wouldn’t swear to it. I have seen writing so much like mine that I wouldn’t swear to it.

Q. Did you ever appoint R. M. Cobban, of Missoula, County of Missoula, State of Montana, attorney in fact, under the power of attorney marked Complainant’s Exhibit “D”?

A. No.

Judge RICHARDS.—Objected to as incompetent, for the reason that it is calling for a conclusion of

(Testimony of Mrs. Mollie Conklin.)

the witness and not stating a fact.

Mr. FRASER.—And for the further reason that the document itself is the best evidence of the fact as to whether he was appointed her attorney or not.

WITNESS.—No. [134—30]

Mr. DAVIDSON.—Q. Mrs. Conklin, if you signed the power of attorney marked Complainant's Exhibit "D," state fully the circumstances and conditions under which you signed the same, that is, if you know that you signed the power of attorney, Exhibit "D."

(No answer.)

Mr. DAVIDSON.—I will withdraw that question.

Q. Mrs. Conklin, are you acquainted with C. E. Glover and J. H. Lavenson, whose names are signed as witnesses to the power of attorney. A. No.

Q. Did you ever sign this power of attorney in the presence of said C. E. Glover and J. H. Lavenson, or either of them? A. No.

Q. I will ask you, Mrs. Conklin, whether or not, in the State of California, in the County and City of San Francisco, on the 27th day of September, 1900, you acknowledged this power of attorney in the presence of, or before Holland Smith, notary public, in and for the city and county of San Francisco, State of California? A. No.

Judge RICHARDS.—Objected to as incompetent, irrelevant and immaterial, and for the further reason that it is not necessary to the validity of a power of attorney that it should be acknowledged.

(Testimony of Mrs. Mollie Conklin.)

Mr. DAVIDSON.—Q. You may state whether or not you received any value, or any other consideration for the execution of this power of attorney marked Complainant's Exhibit "C," as a consideration for making the same irrevocable.

Judge RICHARDS.—Objected to as irrelevant and incompetent, [135—31] for the reason that the question of consideration does not enter into the validity of a power of attorney.

WITNESS.—I never did.

Mr. DAVIDSON.—At this time we will ask that all of the original powers of attorney be marked in lieu of the certified copies, and put in evidence, for the purpose of showing that the said powers of attorney have been added to and altered and changed after they were signed, acknowledged and certified to by the notary public, and for the purpose of showing that the name of R. M. Cobban, as attorney in fact, was inserted after its apparent acknowledgment by the complainant Mollie Conklin, and for the further purpose of showing that the said original powers of attorney are bogus, false and forged instruments, and are not the legally executed powers of attorney of the complainant Mollie Conklin herein.

Judge RICHARDS.—We object, as only two of such powers of attorney have been identified.

Mr. DAVIDSON.—I ask to have them marked as complainant's exhibits, with the stipulation that the examination, having been based upon the original

(Testimony of Mrs. Mollie Conklin.)

power of attorney, that all questions asked on the original Exhibit "C" shall apply to the original copy.

Mr. BLAKE.—And also all objections.

Mr. FRASER.—And that the answers of the witness shall be considered as the answers of the witness to the other exhibits.

(Marked Complainant's Exhibits "C," "D," "E," "F," "G," "H," "I," "J," "K," and "L.")

Mr. DAVIDSON.—We offer in evidence Complainant's Exhibit "E," power of attorney of Mollie Conklin, and Edward A. Reddy and Emily M. Reddy, administrator and administratrix [136—32] of the estate of Patrick Reddy, deceased, to R. M. Cobban, dated the 28th day of February, 1901, signed, sealed and delivered in the presence of C. E. Glover and J. H. Lavenson, and purporting to be acknowledged on the 28th day of February, 1901, before Thomas S. Barnes, notary public in and for the City and County of San Francisco, recorded the 28th day of June, 1901, in book 2 of powers of attorney, at page 365 of the records of Boise County, Idaho.

We offer in evidence now, as Complainant's Exhibit "F," power of attorney of Mollie Conklin, and Edward A. Reddy and Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, to R. M. Cobban, of Missoula, County of Missoula, State of Montana, dated the third day of April, 1901, signed, sealed and delivered in the presence of J. H. Lavenson and C. E. Glover,

(Testimony of Mrs. Mollie Conklin.)

and acknowledged on the third day of April, 1901, before Thomas S. Barnes, a notary public in and for the City and County of San Francisco, State of California, recorded the 19th day of April, 1901, in book 2 of powers of attorney, at page 355 of the records of Boise County, Idaho.

We now offer in evidence, as Complainant's Exhibit "G," power of attorney from Mollie Conklin, Edward A. Reddy and Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, to R. M. Cobban, of Missoula, County of Missoula, State of Montana, dated the first day of March, 1901, signed, sealed and delivered in the presence of C. E. Glover and J. H. Lavenson, acknowledged the first day of March, 1901, before George A. Young, a notary public in and for the City and County of San Francisco, State of California, recorded on the 14th day of March, 1901, in book 2 of powers of attorney, at page 342, of the records of Boise County, Idaho. [137—33]

We offer in evidence, as Complainant's Exhibit "H," power of attorney of Mollie Conklin and Edward A. Reddy and Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, to R. M. Cobban, of Missoula, County of Missoula, State of Montana, dated the 28th day of February, 1901, signed, sealed and delivered in the presence of C. E. Glover and B. McGillan, acknowledged on the 28th day of February, 1901, before Thomas S. Barnes, a notary public in and for the City and County of San Francisco, State of Cali-

(Testimony of Mrs. Mollie Conklin.)

fornia, recorded the 18th day of September, in book 2 of powers of attorney, at page 384 of the records of Boise County, Idaho.

We offer in evidence, as Complainant's Exhibit "I," power of attorney of Mollie Conklin and Edward A. Reddy and Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, to R. M. Cobban, of Missoula, County of Missoula, State of Montana, dated the first day of March, 1901, signed, sealed and delivered in the presence of C. E. Glover and J. H. Lavenson, acknowledged on the first day of March, 1901, before Geo. A. Young, a notary public in and for the City and County of San Francisco, in the State of California, and recorded the 14th day of March, 1901, in book 2 of powers of attorney, at page 338 of the records of Boise County, Idaho.

We offer in evidence, as Complainant's Exhibit "J," a power of attorney from Mollie Conklin, Edward A. Reddy and Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, to R. M. Cobban, of Missoula, County of Missoula, State of Montana, dated the thirteenth day of February, 1901, signed, sealed and delivered in the presence of J. H. Lavenson and C. E. Glover, acknowledged [138—34] on the 12th day of February, 1901, before George A. Young, a notary public in and for the City and County of San Francisco, State of California, recorded in book 2 of powers of attorney, at page 353 of the records of Boise County, Idaho.

(Testimony of Mrs. Mollie Conklin.)

We offer in evidence, as Complainant's Exhibit "K," power of attorney from Mollie Conklin and Edward A. Reddy and Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, to R. M. Cobban, of Missoula, in the County of Missoula, State of Montana, dated the 26th day of September, 1900, signed, sealed and delivered in the presence of C. E. Glover and J. H. Lavenson, and acknowledged on the 26th day of September, 1900, before Holland Smith, a notary public in and for the City and County of San Francisco, State of California, recorded March 23d, 1901, in book 2 of powers of attorney, at page 349, of the records of Boise County, Idaho.

We offer in evidence, as Complainant's Exhibit "L," power of attorney of Mollie Conklin, Edward A. Reddy and Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, to R. M. Cobban, of Missoula, in the County of Missoula, State of Montana, dated the 26th day of September, 1900, signed, sealed and delivered in the presence of C. E. Glover and J. M. Lavenson, acknowledged on the 26th day of September, 1900, before Holland Smith, a notary public in and for the City and County of San Francisco, State of California, recorded on the 23d day of March, 1901, in book 2 of powers of attorney, at page 351.

We offer these powers of attorney for the same purposes as stated on the introduction and offer of Complainant's Exhibit "C."

Mr. BLAKE.—The same objection. [139—35]

(Testimony of Mrs. Mollie Conklin.)

Judge RICHARDS.—The same objection.

Mr. DAVIDSON.—I will say, gentlemen, that in changing these papers there was a mix-up, in the first two, so that the questions would not be properly applicable to the two marked Exhibit “C” and “D.”

We further offer Complainant’s Exhibit “C” for the purpose of showing that said instrument has been mutilated since its execution and delivery by the erasure of the name of one of the parties from said instrument, particularly the name of Edward A. Reddy.

Mr. BLAKE.—We object to the purpose for which you offer this.

Mr. DAVIDSON.—We will want to add the other exhibit, which we will select here as the one which is admissible, and let that be offered before the objection, so that the objection will go to all of them.

At this time an adjournment was taken until 2 P. M., at which time, pursuant to adjournment, the taking of testimony was resumed.

Mr. DAVIDSON.—We offer this certified copy, gentlemen, as Complainant’s Exhibit “M,” certified copy of power of attorney, in the body thereof purporting to be between Mollie Conklin and Emily M. Reddy, sole administratrix of the estate of Patrick Reddy, deceased, to R. M. Cobban, of Missoula, County of Missoula, State of Montana, dated the 16th day of September, 1901, signed, sealed and delivered in the presence of J. H. Lavenson and B. McGillan, and acknowledged on the 16th day of Sep-

(Testimony of Mrs. Mollie Conklin.)

tember, 1901, before Thomas S. Barnes, a notary public in and for the City and County of San Francisco, State of California, recorded on the 7th day of December, 1901, in book 3 of powers of [140—36] attorney, at page 31, of the records of Boise County, Idaho.

Judge RICHARDS.—We raise no objection to this as a copy, but object to the restriction in the purpose stated for which it is offered.

Mr. DAVIDSON.—The offer is made subject to the same limitations and purposes stated in the offer of the other exhibits.

It was here stipulated by and between counsel for the complainants and the defendants that all of the questions asked the witness Mollie Conklin as to Complainant's Exhibits "C" and "D," and all answers made by her in response to such questions, and all objections made by counsel for the defendants as to the competency, relevancy or admissibility of any such testimony shall be deemed by all the parties to apply fully to each of the exhibits "C," "D," "E," "F," "G," "H," "I," "J," "K," "L," and "M," as though said questions were severally propounded to said witness upon each of said exhibits and the answers made thereto as to the said exhibits "C" and "D."

And it was further stipulated by and between counsel for the complainants and the respective defendants herein that the lieu lands described in paragraph seven of the amended complaint of the complainant Mollie Conklin herein were patented by the

(Testimony of Mrs. Mollie Conklin.)

United States of America in the name of Mollie Conklin and Emily M. Reddy and Edward A. Reddy, administratrix and administrator of the estate of Patrick Reddy, deceased, by patent numbers and of the dates as follows, to wit:

Patent No. 4501, dated August 20, 1902.

Patent No. 4511, dated August 28, 1902.

Patent No. 4513, dated September 15, 1902. [141
—37]

Patent No. 4512, dated August 20, 1902.

Patent No. 4507, dated August 20, 1902.

Patent No. 4510, dated August 20, 1902.

Patent No. 4509, dated September 15, 1902.

Patent No. 4508, dated August 20, 1902.

Patent No. 4502, dated August 23, 1902.

Patent No. 4503, dated August 20, 1902.

Patent No. 4734, dated September 15, 1902.

Patent No. 4778, dated September 15, 1902.

Patent No. 4326, dated September 15, 1902.

Patent No. 4777, dated September 15, 1902.

Patent No. 4776, dated September 15, 1902.

Patent No. 4774, dated September 15, 1902.

Patent No. 4785, dated September 15, 1902.

Patent No. 4780, dated September 15, 1902.

Patent No. 4773, dated September 15, 1902.

Patent No. 4775, dated August 20, 1902.

Patent No. 4514, dated July 22, 1902.

Mr. DAVIDSON.—Gentlemen, will there be any objection if the Judge leaves the room?

Mr. BLAKE.—None whatever.

Mr. DAVIDSON.—Suppose we have him swear

(Testimony of Mrs. Mollie Conklin.)

Mrs. Olcese before he goes.

The Examiner thereupon administered the oath to Mrs. M. C. Olcese, and left the room.

Mr. DAVIDSON.—Q. Mrs. Conklin, are you acquainted with the defendant R. M. Cobban?

A. No, sir.

Q. Did you ever meet the defendant R. M. Cobban? A. No, sir. [142—38]

Q. Did you ever have any communication or any correspondence with the defendant R. M. Cobban?

A. No.

Q. Are you acquainted with the defendant E. B. Weirick, sued individually and also as trustee?

A. No, sir.

Q. Did you ever meet said defendant E. B. Weirick? A. No.

Q. Did you ever have any correspondence with him, or communication from him? A. No.

Q. Did you ever receive any consideration for the base lands or the lieu lands described in your complaint from either of the defendants E. B. Weirick or R. M. Cobban? A. No.

Q. Have you ever returned, or offered to return, to the defendant John A. Benson the money paid by him, amounting to \$2,750.00, paid by him to you on the purchase of the Monache lands? A. No.

Q. You did not personally make any such offer?

A. No.

Q. Mrs. Conklin, after you first learned of the existence of the powers of attorney offered in evidence herein, and of the fact that the deeds signed by you

(Testimony of Mrs. Mollie Conklin.)

had been placed of record relinquishing the Monache lands to the United States Government, what, if anything, did you do with reference to giving notice that you repudiated the powers of attorney that existed and the deeds filed for record relinquishing the lands to the United States Government?

A. I turned the business over to my son. [143—39]

Q. When you learned that, your son then acted for you in all those matters? A. Yes.

Q. Mrs. Conklin, did you ever deliver, or authorize anyone to deliver for you, any deeds relinquishing the Monache lands as base lands to the United States Government? A. No.

Q. Did you ever deliver, or authorize anyone to deliver, any powers of attorney executed by you, or claimed to be executed by you, for the sale and disposal of lieu lands selected on the base lands relinquished to the United States? A. No.

Q. Mrs. Conklin, are you ready and willing and able to pay, to return, the \$2,750.00 heretofore paid by Mr. Campbell on account of the defendant John A. Benson to you on the purchase price of the Monache lands?

Mr. FRASER.—I object to that for the reason that it assumes a state of facts not proven by the record, and that is that J. C. Campbell paid her any money at all in payment for these lands.

(The last question was read by the stenographer, at the request of Mr. Davidson.)

WITNESS.—I would rather have the money, the

(Testimony of Mrs. Mollie Conklin.)

purchase price of the land.

Mr. DAVIDSON.—Q. To secure either the original base lands or the lieu lands selected therefor, are you ready, able and willing, upon securing either the original base lands or the lieu lands, to pay to the defendant John A. Benson, or to any defendant entitled thereto, the \$2,750.00 paid by Mr. Campbell to you on the purchase price of the base lands?

WITNESS.—I don't understand, exactly. [144—40]

Mr. DAVIDSON.—I will change that.

Q. —or known as the Monache lands?

A. Yes, I would be willing to take the land back.

Mr. FRASER.—I object to that as based upon a state of facts not shown by the record; there is no evidence in the record that it was paid by J. C. Campbell.

WITNESS.—I would be willing to take the land back.

Mr. DAVIDSON.—Q. If you could get back the original Monache lands, Mrs. Conklin, are you able, ready and willing to repay any and all moneys received by you heretofore on the purchase price of the lands?

Mr. FRASER.—I object to that as incompetent, irrelevant and immaterial, and not a proper tender into court of the money, or rescission of any contract, and therefore improper and immaterial and incompetent.

WITNESS.—If I got the land back, yes. I would be willing to pay the money back.

(Testimony of Mrs. Mollie Conklin.)

Mr. DAVIDSON.—Q. Are you able to pay back at this time any or all moneys heretofore paid you?

A. I don't know whether I would be, just now. It would be a scratch.

Q. Can you raise the money, Mrs. Conklin—I will withdraw that last question.

Mr. DAVIDSON.—Mr. Reporter, you may mark these papers as Complainant's Exhibits "N" and "N-1" for identification. (Marked papers.)

Q. Mrs. Conklin, I hand you Complainant's Exhibit "N," for identification, being a letter on the letter head of Campbell, Metson & Campbell, Attorneys at Law, San Francisco, California, dated December 11, 1901, addressed [145—41] to Mrs. A. R. Conklin, at Bakersfield, California, and signed J. C. Campbell. You may examine this letter and state whether or not you ever received the same, and, if so, how, and if you knew whose handwriting the signature is in, at the bottom there, the signature of J. C. Campbell. A. Yes, I received the letter.

Q. How did you receive it—by what name?

A. Through the mail.

Q. Do you know whose handwriting the name J. C. Campbell is in? A. Yes.

Q. Whose? A. J. C. Campbell's.

Q. The defendant herein? A. Yes.

Q. You received that regularly through the United States mail, did you, Mrs. Conklin? A. I did.

Q. Now, I will hand you paper marked Complainant's Exhibit "N-1" for identification, a letter written on the paper of John A. Benson, San Francisco,

(Testimony of Mrs. Mollie Conklin.)

California, dated December 11, 1901, addressed to Honorable J. C. Campbell, and signed John A. Benson. You may examine the same and state how the same came into your possession.

A. Through the mail, from Mr. Campbell.

Q. You may state whether or not that is the letter referred to in the letter from J. C. Campbell, marked Complainant's Exhibit "N," for identification.

A. Yes.

Q. And you received that through the United States mail at the same time you received Exhibit "N"? A. Yes. [146—42]

Mr. DAVIDSON.—We now offer in evidence, as Complainant's Exhibit "N," the letter identified by the witness, from J. C. Campbell, bearing date December 11, 1901, and addressed to Mrs. A. R. Conklin, Bakersfield, California.

We also offer in evidence, as Complainant's Exhibit "N-1," the letter on the stationery of John A. Benson, dated at San Francisco, California, dated December 11, 1901, addressed to Hon. J. C. Campbell, and signed John A. Benson, identified by the witness.

Mr. FRASER.—We object to the introduction of Exhibit "N-1," for the reason that no proper foundation has been laid for the introduction of the same.

Mr. DAVIDSON.—We will read the letters into the record.

Mr. FRASER.—You may consider them read.

Mr. DAVIDSON.—Reading Complainant's Exhibit "N":

Complainants' Exhibit "N."

“Joseph C. Campbell,
William H. Metson,
Robert W. Campbell.

CAMPBELL, METSON & CAMPBELL.

Attorneys at Law,
115 to 122 Crocker Building,
San Francisco.

December 11, 1901.

Mrs. A. R. Conklin,
Bakersfield, Cal,

Dear Madam:

Enclosed please find letter which I have just received from Mr. Benson, which explains the situation exactly. I had quite a talk with him over the 'phone, and he says that if you can get anyone to take this land at \$4.00 an acre in its present situation, and do better than he can, he is willing to give it up. If you or your sons think you can handle this land better than it is being handled now, I suggest that you purchase Mrs. Reddy's interest in it and pay for the same, and then you can handle [147—43] it to suit yourselves, without any interference by the Courts or anyone else. Probably you can work this through the people who are so anxious to buy the land at the present time. At present I can see nothing better than to let Benson work it out, as it seems to have gotten into a snarl. It seems that we cannot get the deeds back from the Government, and have not yet been able to have them approve the selections. This being the fact, we are willing to do anything we can

to facilitate the matter, and as I have said before, if the people whom you have in view will purchase this land in this situation, we would be willing to let them have it at once.

Yours,

J. C. CAMPBELL.

Enc.”

Reading Complainant's Exhibit “N-1”:

Complainants' Exhibit “N-1.”

“John A. Benson,

Engineer, Land Agent, Dealer in Land Scrip.
Lands Located and Titles Secured Without Settlement.

507 Montgomery St., San Francisco, Cal.

Branch Office: Ernest A. Benson, Manager,

240 Bradbury Block, Los Angeles,
Cal.

San Francisco, Cal., December 11th, 1901.

Hon. J. C. Campbell,

Dear Sir:

Agreeable to your request made to me this morning, I submit the following statement regarding the Forest Reserve basis which you placed in my hands for disposition belonging to Mollie Conklin and the Reddy Estate.

All of the land, except 400 acres, has been deeded to the United States, and deeds placed upon record, and selections made of other lands in accordance with the provisions of the Act of Congress of June 4, 1897 (30 Stats., 36). [148—44]

This was all, or nearly all, located for parties who

were desirous of securing title to unoccupied government lands of the United States, under the provisions of contracts or agreements which in terms provided that after the land selected in lieu of the land surrendered had been located and said location had been accepted by the Commissioner of the General Land Office, and proper evidence furnished thereof, that the parties in whose interests the locations were made would, upon the delivery of a deed conveying the right of the owners, pay the amounts agreed upon.

Up to the present date there has not been a single location accepted by the Commissioner of the General Land Office. It is my intention just as soon as these acceptances can be had to ask for a confirmation of the sales by the Court so that settlement can be made to both the owners and the parties in whose interests the locations were made. We have been bringing every effort to bear to get the Commissioner of the General Land Office to act upon these matters, and as he has lately added several to the working force in his office it is likely we will not have very much longer to wait.

I can cite a case—a location wherein you are interested—wherein the locations were made long prior to these; that is the locations made for Mr. L. R. Hanchett, lying partly in this State, in the Independence District, and partly in the State of Nevada. Those in the Independence District have recently been approved, while those in Nevada have not yet been reached.

The Commissioner also refuses to allow the withdrawal of selections already made until the present

(Testimony of Mrs. Mollie Conklin.)

ones are acted upon, giving as a reason in similar instances, that the locator might desire to select more valuable lands than those selected at present.

[149—45]

At the time those locations were made there was little or no sale for Forest Reserve direct except upon the condition that it were accepted by the Commissioner of the General Land Office. At present if we could only get back the deeds given to the United States there would be little difficulty in disposing of the land.

I have employed counsel specially at Washington to try and secure these approvals, and just as soon as obtained, so as to get confirmation of sales will report promptly.

I regret exceedingly these complications, but I had no reason to expect them, as at the time the locations were made approvals were progressing rapidly. I have many times this amount of locations in my own business delayed in a similar manner.

Very respectfully,

JOHN A. BENSON."

Mr. DAVIDSON.—That is all at present.

Cross-examination.

(By Mr. FRASER.)

Q. Mrs. Conklin, these lands described in this bill of complaint were owned by your husband at one time, were they not?

A. By my husband and Mr. Reddy.

Q. They were owned by Mr. Reddy and your husband? A. Yes.

(Testimony of Mrs. Mollie Conklin.)

Q. Did your husband not have title to them alone for awhile? Was he not the sole owner of them first from the Government?

A. I don't know whether he was or not.

Q. Where did Mr. Reddy get his interest in these lands—from whom, if you know?

A. He got it from my husband.

Q. Mr. Reddy got his interest from your husband?
[150—46]

A. They were in partnership at the time it was bought.

Q. Then, Mr. Reddy had a half interest, did he, with your husband? A. Yes.

Q. What relation existed between your husband and Mr. Reddy?

A. My husband's sister was married to Mr. Reddy.

Q. They were brothers in law? A. Yes.

Q. Did Mr. Reddy die before your husband, Mrs. Conklin, or afterwards? A. Afterwards.

Q. When was the first meeting that you had in which the sale of this land to Benson was discussed—where was that meeting held?

A. In Mr. Campbell's office.

Q. That was in August or September, 1909, was it?

A. Somewhere about there; I couldn't tell exactly the date.

Q. Who asked you to go to Mr. Campbell's office at that time, or to Campbell, Metson & Campbell's office?

A. I don't remember; they let me know some way.

Q. You don't know who informed you of that meet-

(Testimony of Mrs. Mollie Conklin.)

ing or asked you to be present?

A. No, I don't; I suppose they telephoned from the office; I don't remember.

Q. Who went with you when you went down to the office, do you remember? A. My son.

Q. Mr. Norman Conklin?

A. Norman Conklin.

Q. He is the gentleman that is present here to-day as one of your attorneys? A. Yes, sir. [151—47]

Q. Mr. Norman Conklin was an attorney at law at that time, was he?

A. No, he hadn't been practicing; he hadn't practiced at all.

Q. Was he admitted to the bar at that time?

A. Yes, I think he had been.

Q. Did you meet Mrs. Reddy there?

A. Mrs. Reddy was there.

Q. Who else was present at that meeting besides yourself and Mrs. Reddy and Mr. Norman Conklin?

A. Mr. Benson, Mr. Campbell, and Mrs. Coleman, my son and myself.

Q. Is that all that were present at that time?

A. Yes.

Q. What time of the day was it, do you remember—forenoon or afternoon?

A. I think it was afternoon.

Q. Did you know what you were going down to that office about, the business you were going to discuss when you got there, Mrs. Conklin? A. Yes.

Q. It had been talked to you some time prior to this time about the sale of the land, had it?

(Testimony of Mrs. Mollie Conklin.)

A. Yes, I had talked to Mr. Reddy about it before he died.

Q. I believe Mr. Reddy had an agreement with Mr. Benson for the sale of the land before his death, had he not?

A. I think he had; he said he had seen Mr. Benson.

Q. And Mr. Reddy had talked to you about the sale of it? A. Yes.

Q. So after Mr. Reddy died then was the time you had this meeting in the office of Campbell, Metson & Campbell? A. Yes. [152—48]

Q. And you knew at the time you went down there that the matter to be discussed was the sale of this land that your husband and Mr. Reddy had owned?

A. Yes.

Q. How long was it before this meeting that Mr. Reddy had talked to you about the sale of this land?

A. He died in June, and it was while he was sick.

Q. Probably along in June some time?

A. Well, yes—it was before June; in June he was very sick. Several times, whenever I would go in the room, he would talk about it; he was very anxious to sell it and get the money.

Q. Did he tell you who he was going to sell it to?

A. He spoke about selling it to Benson, yes.

Q. The same Benson who is mentioned in this complaint? A. Yes.

Q. And it was for the purpose of carrying out that agreement that you went down to this office of Campbell, Metson & Campbell? A. Yes.

Q. That was your object in going there?

(Testimony of Mrs. Mollie Conklin.)

A. Yes.

Q. Now, Mr. Campbell wasn't your personal attorney, was he, Mrs. Conklin?

A. Yes, they had acted for us.

Q. Had you paid him any retainer in this particular matter?

A. No, I hadn't paid him any retainer, but I paid the firm for what they had done.

Q. You paid them as shown by this receipt which you have introduced in evidence? A. Yes.

[153—49]

Q. That is the only payment that you made to them, is it, what you got this receipt for? A. Yes.

Q. And the services you paid them for are the services that are mentioned in this receipt? A. Yes.

Q. Outside of that you didn't pay them anything, did you, Mrs. Conklin?

A. They had done work for my daughter.

Q. I am asking for you, individually?

A. No, not for me; they had for my husband.

Q. They had done work for your husband?

A. Yes, for him.

Q. And after the death of your husband, the only retainer or moneys that you paid in to Mr. Campbell or the firm of Campbell, Metson & Campbell was as shown by this receipt which you have introduced in evidence? A. Yes.

Q. Now, when you got to the office that afternoon, this matter was discussed, about the sale of the land to Mr. Benson, was it, among all of you?

(Testimony of Mrs. Mollie Conklin.)

A. No; Mr. Campbell and Mr. Benson did most of the talking. No one else said much, only to agree to what Mr. Campbell said to Mr. Benson.

Q. Was something said about the price you was to get for the land, that afternoon? A. Yes.

Q. Do you remember about what the price was?

A. At first we agreed on \$4.00, and then Mr. Benson said there was a great deal of work, and abstracts to make out, and wanted us to reduce it to \$3.00, and we agreed on that. [154—50]

Q. Was that about the same price that Mr. Reddy had told you he was going to sell it to Mr. Benson for?

A. I don't know; I think he wanted \$4.00, but I won't be positive. I think he wanted \$4.00.

Q. At this meeting it was finally agreed that you would accept \$3.80? A. Yes.

Q. That is for what has been designated here as the Monache lands? A. Yes.

Q. And the agreement was that the deeds were to be placed in escrow. Was that the agreement?

A. Yes, the deeds were to be placed in escrow.

Q. And they were to be taken out of escrow when?

A. When the money was paid in.

Q. How long were they to remain in escrow?

A. At first it was thirty days, and then he asked for ninety, or sixty, I am not sure. I am not sure whether the first was thirty or sixty, and Mr. Benson asked for ninety days, and he said then it would be settled up entirely.

Q. That was satisfactory, was it? A. Yes.

(Testimony of Mrs. Mollie Conklin.)

Q. These deeds were not signed there that day in the office, were they? A. No.

Q. How long afterwards, if at any time, were these deeds signed by you?

A. I couldn't tell exactly—perhaps a month, perhaps six weeks or two months.

Q. You don't know how long after this meeting it was before you signed the deeds?

A. I think it was inside of two months, or perhaps less; [155—51] I couldn't say exactly.

Q. Where was it that you signed these deeds?

A. The first lot were signed up at Mrs. Reddy's house.

Q. Do you know how many you signed that time at Mrs. Reddy's house?

A. We signed a good many. Her daughter came in and when she saw them said that we had a pretty good job on hand.

Q. Did you read them over before you signed them?

A. I just glanced at the first, and it seemed to me a description of land, and I didn't read it through; I said to Mrs. Reddy that there was no need of it, Mr. Campbell wouldn't send us anything but what was right and proper, and she said of course not.

Q. It was in the house then that you signed the first deeds and there was quite a number of them?

A. Yes.

Q. And you didn't read them over? A. No, sir.

Q. Have you seen them since? A. No.

Q. You don't know what became of them, do you?

(Testimony of Mrs. Mollie Conklin.)

A. No; I know what ought to have become of them.

Q. Where was the next time you signed any deeds for this land?

A. At my home in the Hotel Savoy.

Q. How long after the meeting at Mrs. Reddy's was it that the second deeds were presented to you for signature?

A. It wasn't very long; maybe a day or two.

Q. Who was present at the time you signed the second deeds?

A. No one but my daughter, Mrs. Olcese.

Q. Did you read those deeds over?

A. No, I didn't read them over. [156—52]

Q. Who brought the deeds to you?

A. A boy from the office.

Q. From what office?

A. Campbell, Metson & Campbell.

Q. If you didn't read them over, how did you know they were deeds?

A. They said they would send deeds.

Q. Of your own knowledge, do you know whether or not they were deeds, if you didn't read them?

A. I didn't read them.

Q. As a matter of fact, you don't know then whether they were deeds or something else, do you?

A. Not from reading them I don't.

Q. Do you know from anything else?

A. No, I know they ought to have been deeds.

Q. You know they ought to have been deeds, but, as a matter of fact, you don't know whether they were deeds or not? A. No.

Q. Did you ask him why you should have to sign

(Testimony of Mrs. Mollie Conklin.)

this second set of deeds, or make any inquiry in regard to that matter? A. No.

Q. Did it appear to you to be rather strange or peculiar that you were asked to sign these second deeds?

A. I supposed they hadn't all been signed at first.

Q. Did you think it required a great number of deeds to transfer your interest in a tract of land?

A. No, I didn't, because they are meadows in the mountains, and some of them are miles apart, and I thought there had to be a deed for each piece of land.

Q. Yet you didn't read these instruments to find out what they were? A. No. [157—53]

Q. Were these the papers that you signed, or that you think you signed, Mrs. Conklin, either at Mrs. Reddy's home or at your home, Complainant's Exhibits "C" to "M" inclusive? Do you think these are the papers, or any of them, that you signed at either of these times? A. No, I don't think so.

Q. You don't think these are the documents. Are you sure on that point, Mrs. Conklin?

A. Well, I don't think I did. I didn't sign any of these things.

Q. You didn't, at that time? A. No.

Q. You have already examined these exhibits by your own counsel, these Exhibits "C" to "M." You have already examined these this morning, Mrs. Conklin? A. Yes.

Q. What do you state as to whether or not that is your signature to each of them?

A. It looks like it, but I wouldn't swear to it.

(Testimony of Mrs. Mollie Conklin.)

They have done so much crooked work that they are just as apt to force my signature as not. I have seen writing so much like mine in California that you can't tell them apart.

Q. So you don't know at the present time whether or not you signed these documents?

A. I wouldn't swear to it.

Q. You wouldn't testify to it? A. No.

Q. At the time you agreed to make the sale of this land to Mr. Benson it didn't make any difference to you if you received the purchase price for this land whether Mr. Benson relinquished it to the Government and traded it off for other land, did it, if you got your pay for it? [158—54]

A. No, I had nothing to do with what he did with it.

Q. You wouldn't make any objection to that if you had received your pay for this land, would you?

Mr. DAVIDSON.—We object to it as incompetent, irrelevant and immaterial, and not proper cross-examination.

Mr. FRASER.—You may answer the question. If you had received—

WITNESS.—If I had received the money, of course, I would not have thought anything about it.

Q. If they had requested you at any time to issue these powers of attorney for the purpose of making this transfer, if you had received your money for the land, you probably would have executed them, would you not?

Mr. DAVIDSON.—We object to it as incompe-

(Testimony of Mrs. Mollie Conklin.)

tent, irrelevant and immaterial, and not proper cross-examination.

WITNESS.—No, I don't think I would have given them powers of attorney.

Mr. FRASER.—Q. If you had received your money for the land, Mrs. Conklin, would it then have made any difference to you?

A. Not after, of course, if I had received the money.

Q. Now, you received, I believe, \$2,750.00, as part payment for this land, did you not?

A. Yes, sir, two payments—\$1,250.00 once and \$1,500.00 another time.

Q. Did you ever demand the balance of the payment?

A. I used to ask down at the office when we were going to get it, and they always said "pretty soon." That was about all we got.

Q. When did you find out that these lands had been exchanged for lieu lands, or that Mr. Benson was making an effort to make the exchange of these Monache lands for other [159—55] Government lands? When did you discover that?

A. When my son wrote to me—N. E. Conklin.

Q. Do you remember about the time?

A. It was some time after.

Q. About how long after?

A. I couldn't tell you.

Q. Was it a couple of years after?

A. It was months and months after; I couldn't tell exactly. It might have been a year, and it might not.

Q. You don't know how long after it was?

(Testimony of Mrs. Mollie Conklin.)

A. No.

Q. Your son was the first one that informed you of that fact, was he? A. Yes, sir.

Q. What did you do upon receiving that information?

A. I turned it over to him to do what he thought fit.

Q. Turned it over to your son? A. Yes.

Q. Had he been looking after the matter for you?

A. Yes, after we found out that things were crooked.

Q. From the very first your son was advising with you in regard to the advisability of this sale, was he not?

A. Mr. Campbell made all the agreements.

Q. Your son was present in the office with Mr. Campbell when the contract was agreed upon, was he not? A. Yes.

Q. Didn't you talk it over naturally with your son in regard to this matter at that time?

A. We were there when they made the agreement; that was all there was about it. My son went home that afternoon, so that we hadn't any conversation about it, only that it was sold—we supposed it was.
[160—56]

Q. So the first you heard of it was through your son? A. Yes.

Q. And you think that was about a year after the meeting in Campbell's office?

A. It might be and it might not be a year; I couldn't tell exactly.

(Testimony of Mrs. Mollie Conklin.)

Q. What did you do right after you found it out? You turned it over to your son. What was done by your son—what did you authorize him to do?

A. I don't know exactly what he did. I guess he acted as attorney when I found out.

Q. Did you find out from anybody else besides your son that Benson was trying to make the exchange of the Monache lands for other Government lands?

A. No.

Q. The only one that informed you of that was your son? A. Yes.

Q. Did you find out from Mr. Campbell?

A. Couldn't find out anything from Mr. Campbell.

Q. He didn't inform you that Mr. Benson was making this exchange of lands? A. No.

Q. You read this exhibit, which was sent to you by Mr. Campbell?

A. I read that, yes; that was some time after, that I read that.

Q. This is dated December 11, 1901. This was a letter evidently addressed to you by Mr. Campbell, and you have stated that you received this letter.

A. Yes.

Q. By this letter he informs you of the condition of affairs, doesn't he? [161—57] A. Yes.

Q. There wasn't anything secret about it, so far as this letter was concerned, or about the matter of the exchange of the lands, was there?

A. No, I didn't know anything about that. I supposed that we had sold the land.

Q. He states in this letter of December 11, 1901,

(Testimony of Mrs. Mollie Conklin.)

that "If you or your sons think you can handle this land better than it is being handled now," that you should do so, and take it up, does he not?

A. Yes, we had a better offer.

Q. Did you ever write to Mr. Campbell and tell him you wanted to take it up, in answer to that letter?

A. When I went back there—Mrs. Reddy and I—I told her about it, and she said we would go down and see Mr. Campbell, and he said he couldn't take it out of Benson's hands; it was in such a muddle he couldn't do anything. He had told us before that that we could get it any time, take it out of his hands.

Q. You also received this letter with the signature of Mr. Benson on it, at the same time you received the letter from Mr. Campbell? A. Yes.

Mr. FRASER.—I believe that is all I desire to ask.

Judge RICHARDS.—Q. What did you do after receiving that letter from Mr. Benson?

A. I always sent these letters to my son; I read them and sent them to him.

Q. That is the only knowledge you have about what was done after that?

A. I handed them over to him. [162—58]

Q. Is that the only knowledge you have as to what was done about these lands, after you turned it over to your son?

A. Yes, that is all I knew about them. I knew we hadn't our money.

Q. How long before you received the Campbell and Benson letters did you have information that they were exchanging these for other lands?

(Testimony of Mrs. Mollie Conklin.)

A. I didn't understand anything about that. I supposed we had sold the land to Mr. Benson.

Q. These letters are the first knowledge you had of it?

A. I didn't know anything about that. We sold it to Mr. Benson, and he was to pay us the money.

Q. I simply asked you, Mrs. Conklin, if these letters were the first knowledge you had that they were exchanging your lands for other lands? A. Yes.

Q. Then, you received the first information you had from Mr. Campbell, through this letter?

A. Yes.

Q. Then, you are mistaken about receiving the first information from your son, are you?

A. Yes, about the powers of attorney.

Q. You received the first information from your son about the powers of attorney? A. Yes.

Q. When was that, relative to the date of this Campbell letter? A. I couldn't say.

Q. Before or after?

A. I couldn't remember that, no; it was long ago.

Q. When did you first see these powers of attorney?

A. I never saw them before. This is the first time.

[163—59]

Q. This is the first time you recall seeing them?

A. Yes.

Q. I didn't quite understand you, Mrs. Conklin, whether you are ready to say that the signature to these powers of attorneys are yours or not.

A. It looks like my writing, but they have done so much crooked business that I couldn't say.

(Testimony of Mrs. Mollie Conklin.)

Q. Are you willing to swear that that isn't your signature?

A. I wouldn't swear it isn't, or that it is; it looks like it.

Q. You signed quite a bunch of papers about these lands, and these might have been some of them?

A. They might, but not with that writing on them.

Q. What I want to get at is, in signing these two packages of papers that you speak about with reference to these lands, were these signatures on these powers of attorney that look like yours? These might have been one of the packages of papers that you signed, mightn't they? A. They might.

Judge RICHARDS.—I believe that is all I care to ask.

(At this point Mr. McCracken, the examiner, returned to the room.)

Redirect Examination.

(By Mr. DAVIDSON.)

Q. Mrs. Conklin, do you know, of your own knowledge, of any agreement between Patrick Reddy in his lifetime and John A. Benson, in regard to the sale of the Monache lands?

A. No, I know they talked about it.

Q. Do you know that there was any agreement, prior to Patrick Reddy's death, in regard to the sale of the Monache lands to Mr. Benson?

A. I don't know whether he tied it up or not, but I know [164—60] they had talked over the sale of it. Mr. Reddy said he wouldn't sell it for anything but cash.

(Testimony of Mrs. Mollie Conklin.)

Q. How do you know about the agreement, or any talk between Mr. Reddy in his lifetime and Mr. Benson? A. I know what Mr. Reddy said.

Q. Mrs. Conklin, were you, in August and September, 1900, familiar with the mode of exchanging what is known as base lands, lands situated in the forest reserve, for lieu lands?

A. No, I didn't know anything about it.

Q. Now, at the time of the meeting in Mr. Campbell's office, did you agree upon a method for the sale of the Monache lands to Mr. Benson?

A. We agreed to sell it to him; he was to pay for it in ninety days.

Q. Now, did you ever afterwards have any agreement with either Mr. Campbell or Mr. Benson whereby you changed the terms of the sale, or the method by which the sale should be effected?

A. Mr. Benson asked for further time.

Q. Just answer the question. Did you ever afterwards have any agreement with either Mr. Campbell or Mr. Benson whereby the terms, the manner and method of making the sale were changed?

A. No.

Q. Mrs. Conklin, have you ever had much experience, any experience, in business matters, pertaining to business? A. I have not.

Q. What is your age now, Mrs. Conklin?

A. I am over sixty.

Q. It is a leading question, but—

A. I am over twenty-one.

Mr. DAVIDSON.—We desire now to re-offer

Complainant's Exhibit "A," as an original instrument recorded in the office of [165—61] the recorder of Inyo County, California, and also recorded in the office of the County Recorder of Tulare County, California, as shown by the original endorsements on the instrument.

Mr. FRASER.—We object to it as incompetent, irrelevant, and immaterial; it doesn't tend to prove any title, and for the further reason that it isn't authenticated as required by law to admit it as the judgment of another court in evidence in this court.

Mr. DAVIDSON.—In addition to the offer made this morning as an original instrument recorded in the office of the two counties.

(Witness excused.)

It is stipulated and agreed by and between counsel for the plaintiffs and the respective defendants that prior to the month of June, 1900, the complainant Mollie Conklin and one Patrick Reddy were the owners of the base lands situated in the State of California, and within the boundaries of the Sierra Forest Reserve, as described in paragraph nine of the complainant Mollie Conklin's amended bill of complaint herein, and that the complainant Mollie Conklin was the owner of an undivided one-half interest in said lands, and that at the time of the meeting in the office of J. C. Campbell, in August, 1900, Patrick Reddy was deceased, and that Edward A. Reddy and Emily M. Reddy were, on said date, the administrator and administratrix of the estate of Patrick Reddy, deceased, and at said times the said base lands were owned by the said complainant Mollie Conklin

(Testimony of Mrs. Margaret Conklin Olcese.)
and by the estate of Patrick Reddy, deceased, and that Mollie Conklin was the owner at said time of an undivided one-half interest in said base lands, and that the estate of Patrick Reddy, deceased, was the owner of an undivided one-half interest in said base lands. [166—62]

**[Testimony of Mrs. Margaret Conklin Olcese, for
Complainants.]**

Mrs. MARGARET CONKLIN OLCESE, produced as a witness on behalf of complainants, having been duly sworn, testified as follows:

Direct Examination.

(By Mr. DAVIDSON.)

Q. Where do you reside, Mrs. Olcese?

A. Since 1902 I have been mostly in New York, with the exception of twice I have been to California three or four months at a time.

Q. What relation, if any, are you to the complainant, Mollie Conklin? A. Daughter.

Q. What relation were you to one Patrick Reddy, late deceased? A. His niece by marriage.

Q. And you were acquainted with Patrick Reddy in his lifetime? A. Very well.

Q. And with Mrs. Emily M. Reddy?

A. Very well.

Q. And with one Edward A. Reddy? A. Yes.

Q. Where were you living in the months of August and September, 1900?

A. At the Hotel Savoy, San Francisco, California.

Q. With whom were you living at that time?

(Testimony of Mrs. Margaret Conklin Olcese.)

A. With my mother.

Q. Mollie Conklin? A. Yes.

Q. In 1900 were you acquainted with the firm known as Campbell, Metson & Campbell, attorneys at law, of San Francisco, California? [167—63]

A. I was.

Q. Were you, in the months of August and September, 1900—do you—were you present when your mother signed any instruments sent her from the office of Campbell, Metson & Campbell?

A. I was.

Mr. FRASER.—Objected to as incompetent, irrelevant, and immaterial, not tending to connect the instruments with any matters in litigation in this suit.

Mr. DAVIDSON.—Q. You may state who, if you know, brought the papers to your mother from the office of Campbell, Metson & Campbell, about the time asked about.

A. I didn't open the door; mother opened the door, and she told me that they were papers from the office of Mr. Campbell.

Q. You didn't see who brought them? A. No.

Q. Did you see your mother sign those papers?

A. I did.

Q. Was anyone else present at the time she signed them, other than yourself and your mother?

A. No, not at the time she signed them, but people were passing in, coming in, as they always do in a hotel.

Q. Do you know who came for the papers that your mother had signed?

(Testimony of Mrs. Margaret Conklin Olcese.)

A. Yes, I opened the door, and it was one of the office boys from Campbell, Metson & Campbell's.

Q. Had you seen the boy who came for the papers in the office of Campbell, Metson & Campbell?

A. Yes, I opened the door, and he said he had been sent from the office of Mr. Campbell for the papers from mama, and I turned to mother, and so she did them up and gave them to the boy and the boy took them. [168—64]

Q. Were you present with your mother during all the time these papers were in your apartments on that day? A. Yes, I was there all afternoon.

Q. Was any notary public present at your mother's apartments during that time, while the papers were there? A. No.

Q. Did your mother acknowledge these papers before anyone? A. Not in my presence.

Q. You were present all the time the papers were there, were you, Mrs. Olcese?

A. Yes, because the boy didn't come for them until somewhere between four and six o'clock.

Q. And during none of that period was any notary public or other person present to take acknowledgments? A. No.

Q. Did you afterwards, Mrs. Olcese, at the request of your mother, or otherwise, call at the office of Campbell, Metson & Campbell in regard to any papers or business matters relating to the sale of the Monache lands?

A. Yes, I called a number of times.

Q. With whom did you talk during those conversations?

(Testimony of Mrs. Margaret Conklin Olcese.)

A. Why, I think the first time, as near as I can place them in their natural sequence, I took a telegram down to Mr. Campbell; we got the telegram from Bakersfield.

Q. Who was that from?

A. From my brother, N. E. Conklin. I believe I phoned to Mrs. Reddy and she met me and we went to the office together, and we saw Mr. Campbell.

Q. About what time was that?

A. As nearly as I can fix it, in the month of November, 1900. [169—65]

Q. Did you have a conversation with Mr. J. C. Campbell at that time?

A. I did. I told him of the offer and showed him the telegram, and asked him if he wouldn't see Mr. Benson and see what could be done about it, and he ended up by saying perhaps I had better take it to him, and Mrs. Reddy said, "Hadn't I better go with her?" And he said, "No. I will send one of the office boys with her," and he called him and he and I went down to Mr. Benson's office.

Q. During the conversation with Mr. Campbell at that time was anything said in regard to the deeds for the Monache lands that your mother had made?

A. No, not at that time.

Q. Did you at that time, or, after seeing Mr. Campbell did you go to the office of Mr. John A. Benson?

A. I did; I went then, immediately.

Q. Did you see Mr. Benson personally at that time?

A. Yes; Mr. Benson was not in when we got there.

(Testimony of Mrs. Margaret Conklin Olcese.)

There was some woman in the office, and she said Mr. Benson was out, and asked us to wait, which we did, and Mr. Benson came in and I told him we had got this telegram, and wanted to know what he was going to do about it, and I said mother didn't want to wait six or eight or three months for the money, and he said "I prefer not to talk to you about this; all my business has been done with Mr. Campbell, but as far as you are concerned, I prefer not to talk to you."

Q. That was all that was said between you and Mr. Benson at that time?

A. Yes, he wouldn't talk to me.

Q. Did you ever see Mr. Campbell in regard to the Monache lands?

A. I went down to see him afterward, yes, and, of course, [170—66] he had his private office on the inside, and I went into Milton Bernard's office—the room he occupied, at least—

Q. Who was he?

A. He was one of the office boys, supposed to be a clerk there—I thought he was one of the firm—but Mr. Campbell was always out, and I never could see him.

Q. Did you make any inquiry for Mr. Campbell?

A. I did. I told him that I had come down to see Mr. Campbell in regard to the deeds being in escrow.

Q. From whom did you make such inquiry?

A. Milton Bernard and Mr. Jacobs.

Q. Who was Mr. Jacobs?

A. He was one of the office lawyers or clerks.

Q. What, if anything, did they inform you with re-

(Testimony of Mrs. Margaret Conklin Olcese.)

gard to the deeds to the Monache lands?

A. Every time I would go and ask them about it they would tell me they were in escrow, and Milton would disappear and come back and say that Mr. Campbell was out, but that they were in the bank with which they did business, probably, and that was the Anglo-California Bank. That was all we could get out of them.

Q. Do you remember how many trips you made to see Mr. Campbell after the first one you have testified to?

A. I went back to get the telegram, and it had disappeared, and then I went back between three and five times, I guess, about the escrow business.

Q. How did you come to see about these escrow papers? A. We weren't getting any money.

Q. You may state whether your mother wanted you to ascertain in regard to the matter.

A. Yes, mother and my brother wanted to know.

Q. Were you ever able to receive any information from Mr. [171—67] Campbell, or from the firm of Campbell, Metson & Campbell, as to the bank in which the deeds were placed in escrow?

A. No, no one but Milton Bernard. He said he presumed they were in the Anglo-California Bank.

Q. You may state whether or not you were informed that the deeds to the Monache lands had been delivered to John A. Benson, conveying the Monache lands to the United States, and filed for record.

A. No, they told me always they were in escrow.

Q. During any time while you were making in-

(Testimony of Mrs. Margaret Conklin Olcese.)

quiries in the office of Campbell, Metson & Campbell, did they inform you that any powers of attorney had been executed for the selection of lieu lands.

A. No.

Q. Was anything said about the selection of lieu lands at any of these times? A. No.

Q. In your conversation with Mr. Benson did he say anything in regard to the base lands having been relinquished to the United States?

A. No, he wouldn't talk to me.

Q. Did he say at that time that he had secured powers of attorney and made selections for your mother of lieu lands? A. No.

Q. Were you present when any payments were made by Mr. Campbell or the firm of Campbell, Metson & Campbell, on account of the sale of the Monache lands?

A. Yes, I was with my mother when \$1,500.00 was paid to her.

Q. Who made the payment to her at that time?

A. We went in and there was a check from some place came out, and we had to wait while Milton Bernard—I don't know whether he went personally or sent one of the boys to the bank, [172—68] and the money was given to us in gold coin.

Q. Were you present at the time of the payment of \$1,250? A. No.

Q. Now, Mrs. Olcese, had you been living with your mother continuously previous to 1900?

A. I had lived with mother since my father's death in 1897.

(Testimony of Mrs. Margaret Conklin Olcese.)

Q. You may state, if you know, whether or not, from the time of your father's death up to say September, 1900, whether or not Mr. J. C. Campbell, or the firm of Reddy, Campbell & Metson were your mother's attorneys. A. They were.

Q. Do you know if, during that time, the firm of Reddy, Campbell & Metson, or J. C. Campbell, acted as your mother's attorneys in different matters that she had? A. They acted in my father's estate.

Q. Do you know whether or not the firm of Reddy, Campbell & Metson were attorneys for your father in his lifetime? A. Yes.

Q. For how long, if you know?

A. I don't know the number of years.

Q. Previous to 1900 do you know whether or not your mother had consulted any other lawyer than the firm of Reddy, Campbell & Metson, as to any legal matters that she might have? A. No.

Q. Do you know where your mother was between the first part of the month of December, 1900, and the latter part of the month of August, 1901?

A. Some time the first of December—between the first and third of December—mother left San Francisco and went to Bakersfield.

Q. What year? A. 1900. [173—69]

Q. Bakersfield, California? A. Yes.

Q. Do you know how long she stayed in Bakersfield?

A. She stayed until the latter part of the following August or September.

Q. That is August, 1901? A. 1901.

(Testimony of Mrs. Margaret Conklin Olcese.)

Q. Were you in San Francisco during the period that your mother was in Bakersfield, or out of San Francisco?

A. I was there until Christmas week and then I went to Bakersfield just for the holidays.

Q. During the time you were in San Francisco prior to the holidays where were you living?

A. I occupied the rooms in the Hotel Savoy.

Q. Was your mother at home any time during that period? A. She was not in San Francisco.

Q. When you went to Bakersfield during the holidays you may state whether or not you found your mother in Bakersfield. A. Yes, she was there.

Q. About what time after the holidays did you return to San Francisco?

A. I think I came back directly after New Years.

Q. How long did you stay in San Francisco that time?

A. I stayed there then until summer—I think it must have been in June—because we always went away during the summer months, and I went back down and my mother and sister joined us and we went down to Santa Monica.

Q. During that period since your return from Bakersfield, after New Years, 1901, up to the time you went to Bakersfield about June or July, 1901, had your mother been in the City of San Francisco or County of San Francisco?

A. No, I lived there alone. [174—70]

Q. Were you present with your mother continuously from the time you went to Bakersfield in June

(Testimony of Mrs. Margaret Conklin Olcese.)

or July, 1901, up till August or September, 1901?

A. Yes, we were together all that time.

Q. During that time did your mother return to San Francisco or to the County of San Francisco?

A. No, we were in the southern part of the state.

Cross-examination.

(By Mr. FRASER.)

Q. This visit you made to the office of Mr. Campbell I believe you stated was after you received a telegram from your brother from Bakersfield?

A. Yes.

Q. What was that telegram in regard to?

A. In regard to the Monache lands.

Q. Do you remember what it stated?

A. I couldn't give it in the exact words, but I know it stated that there was a man down in Bakersfield who would take the lands, and had the money in the bank, and would pay \$5.00 an acre for them.

Q. And it had nothing to do with the question of deeds, or anything of that kind? A. No.

Q. But was just about another buyer? A. Yes.

Q. That was the reason you made the trip to Mr. Campbell's office? A. Yes.

Q. Did you go down there to find out if you could get the land back from Mr. Benson?

A. No; I just took it down to let Mr. Campbell see that we needed the money. [175—71]

Q. Did he advise you to sell it to the man in Bakersfield? Was your object in seeing Campbell to get him to permit you to sell it to this man in Bakersfield? A. We wanted some money.

(Testimony of Mrs. Margaret Conklin Olcese.)

Q. At that time you hadn't any knowledge that the deeds were turned over to the Government in consideration of other lieu lands? A. No.

Q. And it had nothing to do with that transaction then?

A. No, only on one of these visits to the office I did ask Mr. Milton Bernard—I asked him if Benson was going to do any crooked work, and he said “no, he wouldn't dare do it. We kept him out of jail a few years ago, and he wouldn't dare do it.”

Q. I believe you stated that this was the only interview that you had with Mr. Campbell personally?

A. Yes, Mr. Campbell was always out when I went to see him.

Q. And Mr. Benson refused to discuss the matter with you at all?

A. Yes. He said “My business has been done with Mr. Campbell entirely”; he said he had done all his business with Mr. Campbell.

Q. You understood him to mean that Mr. Campbell was his attorney?

A. I don't know; I presume Mr. Campbell must have been our attorney in that case.

Q. But after he told you that, what was your understanding then?

A. That he wanted to see Mr. Campbell and see what Mr. Campbell would say about it, as long as he was acting for us.

Q. Did you go back to Mr. Campbell after you saw Mr. Benson?

A. I went back and told them that Mr. Benson was

(Testimony of Mrs. Margaret Conklin Olcese.)

coming up to see Mr. Campbell, and left the telegram there to be given [176—72] to Mr. Campbell, and then when I went back the telegram had been placed on his desk and it had disappeared.

Q. Was Mr. Campbell well known to your family?

A. Yes, he has been a guest in our house, and we have been a guest in his house.

Q. You knew him for a great many years?

A. Yes.

Q. Mr. Reddy was some relation to you, was he?

A. Yes, an uncle by marriage—more like an own uncle, though.

Q. Your father had his legal business transacted by Mr. Reddy, did he not?

A. No; Mr. Campbell acted also for my father.

Q. When he was alive? A. Yes.

Q. After the death of your father, what business did Mr. Campbell transact for you outside of the settlement of the estate?

A. That was the only business we had.

Q. After the death of your father?

A. The firm settled up the estate.

Q. That was the only legal business they transacted for you?

A. No; Mr. Campbell was afterwards acting as my mother's attorney to carry out the agreement of this sale with Benson.

Q. How do you know that?

A. Because I saw Mr. Metson personally myself about a matter of business that was my own private business, and asked him what Mr. Campbell was go-

(Testimony of Mrs. Margaret Conklin Olcese.)

ing to do, and he said that Mr. Campbell had charge of the matter and he didn't know anything about it.
[177—73]

Q. Your knowledge of Mr. Campbell's relation came from this conversation you had with Mr. Metson?

A. No; from my own interview with Mr. Campbell.

Q. What did he state to you at that time?

A. He simply told me to take the telegram down; I don't remember the full conversation I had with him.

Q. He told you to take the telegram to Mr. Benson?

A. Yes, and see what Mr. Benson would say to it.

Q. From that you would also conclude that he was acting as your mother's attorney?

A. My mother said he was.

Q. From all these things that you have just stated you arrived at the conclusion that Mr. Campbell was your mother's attorney?

A. Was acting as her attorney to carry out this agreement of sale.

Q. That was your understanding, as you have stated it here?

A. When I went to see about the sale, it was always for Mr. Campbell that I asked.

Q. Did you say you only saw him one time?

A. Yes, because he used to send word that he wasn't in.

(Testimony of Mrs. Margaret Conklin Olcese.)

Redirect Examination.

(By Mr. DAVIDSON.)

Q. On these visits that you made to the office of Campbell, Metson & Campbell, you always inquired for Mr. J. C. Campbell? A. Always.

(Witness excused.) [178—74]

[Testimony of N. E. Conklin, for Complainants.]

N. E. CONKLIN, a witness on behalf of the complainants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. DAVIDSON.)

Q. You may state your name.

A. N. E. Conklin.

Q. Where do you reside, Mr. Conklin?

A. Berkeley, Alameda County, California.

Q. What relation do you bear to the complainant Mollie Conklin? A. I am her son.

Q. You are also the son of A. R. Conklin, deceased? A. Yes, sir.

Q. Were you acquainted with one Patrick Reddy, attorney at law, of San Francisco, in his lifetime?

A. Yes.

Q. What relation did you bear to Mr. Reddy?

A. I am his nephew by marriage; he is my uncle.

Q. Do you know what relation existed between Patrick Reddy in his lifetime and Joseph C. Campbell? A. They were partners.

Q. Do you know what the name of the firm was?

A. Reddy, Campbell & Metson.

Q. Mr. Metson, what were his initials?

(Testimony of N. E. Conklin.)

A. W. H.

Q. Do you know when Patrick Reddy died?

A. He died on the 26th of April, 1900.

Q. Do you know what relation had existed between your mother and the firm of Reddy, Campbell & Metson during your father's lifetime, and up to the death of Mr. Reddy—after your father's—
[179—75]

Mr. FRASER.—We object to that as incompetent, irrelevant and immaterial, and calling for a conclusion of the witness.

WITNESS.—I do.

Mr. DAVIDSON.—Q. You may state what it was, if you know. A. Between what dates?

Q. From the death of your father up to the death of Mr. Reddy.

A. The firm were the attorneys for my mother.

Q. Do you know what business they transacted for your mother as her attorneys during that period?

A. They were attorneys for her personally, and as executrix.

Q. During that time was the firm of Reddy, Campbell & Metson your mother's attorneys in all legal matters that she had? A. Yes.

Q. You may state, if you know, who was your mother's attorney after the death of Mr. Reddy, and up to the time of the settlement of your father's estate. A. Campbell & Metson.

Q. And which Campbell was it that was attorney for your mother?

A. J. C. Campbell, the defendant in this action.

(Testimony of N. E. Conklin.)

Mr. FRASER.—I move to strike out the answer of the witness, as a conclusion, and no statement of fact.

Mr. DAVIDSON.—Q. Mr. Conklin, were you present at a meeting at which your mother, Mollie Conklin, Mrs. Emily M. Reddy, the widow of Patrick Reddy, deceased, Mrs. Coleman, the daughter of Emily M. Reddy, Mr. John A. Benson and Mr. Joseph C. Campbell were present, about the month of August or September, 1900?

A. Yes, I was present. [180—76]

Q. Who asked you to be present at that meeting?

A. Mr. Campbell.

Q. That was Joseph C. Campbell, the defendant?

A. It was.

Q. Were you at that time actively engaged in the practice of law, Mr. Conklin? A. No.

Q. Were you at that time attorney for Mollie Conklin in any matters or for any purpose?

A. No.

Q. You may state, Mr. Conklin, what was said at the meeting in the office of Mr. Campbell, to which you have just referred.

A. I can't remember the exact conversation, but the substance of the conversation was in regard to negotiating a sale for the Monache lands, and the result was that we agreed to sell the Monache lands, that the deeds were to be placed in escrow, the price was \$3.00 an acre, and they were to—

Mr. FRASER.—Was this agreement reduced to writing?

(Testimony of N. E. Conklin.)

WITNESS.—It was never reduced to writing. The deeds were to be placed in escrow, and he stated that he would close the matter up in ninety days.

Mr. DAVIDSON.—Q. Who stated?

A. Mr. Benson.

Q. You may state, if you remember, who was to prepare the deeds for the Monache lands.

A. Benson said that he would prepare the deeds and satisfy himself as to the title.

Q. Was anything said as to what should be done with the deeds after they were prepared by Mr. John A. Benson?

A. Mr. Campbell was to supervise and see that the deeds were as we had agreed upon and to attend to putting them into escrow. [181—77]

Q. Do you know, of your own knowledge, Mr. Conklin, what relation—whether or not the relation of attorney and client existed at that time between Mrs. Emily M. Reddy and Mr. Joseph C. Campbell?

A. Yes, I know it did.

Q. In what way, Mr. Conklin?

A. Mr. Campbell was attorney for Mrs. Reddy personally and as executrix.

Q. Executrix of what?

A. Of the will of Patrick Reddy, deceased.

Q. Was anything said at that time as to whom the deeds should be made, conveying the Monache lands?

A. It was understood that Mr. Benson was purchasing the lands.

Q. Was anything said at that time about convey-

(Testimony of N. E. Conklin.)

ing the lands to the United States of America as base lands for the selection of lieu lands?

A. Not a word.

Q. Was anything said at that time as to your mother or any of the other owners of the base lands signing applications for the selection of lieu lands?

A. Nothing was said; selections were not mentioned.

Q. Was anything said in regard to the execution by your mother of powers of attorney to deal in lieu lands that might be selected?

A. Powers of attorney were not mentioned at the meeting.

Q. What was the agreement as to what should be done with the deeds after their execution?

A. They were to be placed in escrow.

Q. By whom, if you remember?

A. Mr. Campbell was to attend to the matter.

Q. Who at that meeting advised your mother, Mollie Conklin, [182—78] in regard to the method and mode of conveying and disposing of the Monache lands? A. Mr. Campbell.

Q. Joseph C. Campbell?

A. Joseph C. Campbell.

Q. Were you at that time advising your mother as to the legal matters involved in the transfer of the land? A. I was not.

Q. Were you consulted in regard to the legal phase of the conveyance of the land?

A. Prior to our going there we didn't talk the matter over, as I remember it.

(Testimony of N. E. Conklin.)

Q. Were you consulted at the time as to the best manner and method that should be employed in conveying the lands to Mr. Benson?

A. We discussed it, but relied on Mr. Campbell's confirmation of what we had discussed.

Q. Did Mr. Campbell approve the method agreed upon for the conveyance of the base lands, the Monache lands? A. Yes, he did.

Q. You may state whether or not it was agreed at that time that Mr. Campbell should examine and approve the deeds for the Monache lands before they should be signed by your mother, Mollie Conklin.

A. It was, and Mr. Campbell stated at that time that as the base lands were involved in probate it would be necessary for him to secure an order of sale before we could enter into the transaction, in order to carry it through.

Q. What probate proceedings did he refer to at that time?

A. The matter of the Reddy estate.

Q. Who was to attend to having the deeds executed by your mother and Mrs. Emily M. Reddy and Edward A. Reddy? [183—79]

A. Mr. J. C. Campbell was to supervise it.

Q. Was anything said at that time in regard to delivering the deeds to John A. Benson previous to payment being made for the Monache lands?

A. Not a word.

Q. What condition, if any, was imposed upon the delivery of the deeds to John A. Benson?

A. The moneys should first be paid into the bank

(Testimony of N. E. Conklin.)

before he could take the deeds out.

Q. Was anything said about the lands being surrendered and lieu lands selected previous to payment? A. Nothing.

Q. What was the consideration agreed upon, and how was it to be paid for the Monache lands?

A. The consideration agreed upon was cash, \$3.80 an acre, and it was to be paid into the bank when they took the deeds out.

Q. How many acres of land, if you know, Mr. Conklin, were involved in the Monache tract, known as the Monache lands? A. About 9,600 acres.

Q. Mr. Conklin, on the day of the conference in Mr. Campbell's office, after that did you have any further conference with your mother or Mr. J. C. Campbell in regard to the sale of the land?

A. I did not with Mr. Campbell; I did with my mother.

Q. When?

A. When we were leaving the office that afternoon, and I stated that—

Mr. FRASER.—We object to any conversation had between the witness and complainant Mollie Conklin after they left the office of J. C. Campbell, as incompetent, irrelevant and immaterial.

Mr. DAVIDSON.— [184—80] Q. Mr. Conklin, what did you do after that meeting, if anything? Did you stay continuously in the City of San Francisco?

A. After the meeting was over, I immediately got ready and left for Bakersfield that evening.

(Testimony of N. E. Conklin.)

Q. Where were you living at that time?

A. Bakersfield, Kern County, California.

Q. That was your home?

A. That was my home.

Q. How long did you stay in Bakersfield after going down that time?

A. About a year and a half before I visited San Francisco again.

Q. During that time did you have any conversation with Mr. Joseph C. Campbell or John A. Benson?

A. Never saw either one of them.

Q. Were these matters of the sale of the Monache lands at any time put upon your advice as an attorney; were you employed in the matter of investigating the sale of the Monache lands?

A. Yes.

Q. About what time?

A. About 1901, December.

Q. You may state what the first information you received as to the deeds for the Monache land conveying them to the United States was as to being placed of record.

A. There was a letter from Mr. Campbell, and a letter from Mr. Benson which my mother gave me.

Q. I call your attention, Mr. Conklin, to Complainant's Exhibit "N," letter dated December 11, 1901, from J. C. Campbell. You may state whether that is the letter you received from your mother.

A. That is the letter. [185—81]

Q. She turned the letter over to you at that time?

A. She did.

Q. I hand you Complainant's Exhibit "H-1," and

(Testimony of N. E. Conklin.)

you may state whether or not that is a letter also delivered to you by your mother at the same time.

A. Yes.

Q. Was that the first information you had received with regard to the relinquishment of the Monache lands to the Government and the selection of lieu lands?

A. Yes, that was the first information I had of it.

Q. When you received that letter, what instructions, if any, did you receive from your mother in regard to investigating the matter?

A. I don't remember as there were any instructions; I simply took it up and investigated it.

Q. After the receipt of those letters, did you act as your mother's attorney in regard to those lands?

A. Yes, I did.

Q. You may state what you did after the receipt of the letters marked "N" and "N-1," in regard to ascertaining what had been done in regard to the sale and transfer of the Monache lands.

A. After this date I went to Visalia, Tulare County, California, the county seat of Tulare County, where the public records are kept, and I investigated the records, and discovered that a large number of deeds conveying these lands to the Government were on record.

Q. After discovering these deeds conveying the land to the United States Government on record, did you communicate with Mr. J. C. Campbell, or the defendant John A. Benson? A. Yes.

Q. About what time? [186—82]

(Testimony of N. E. Conklin.)

A. I can't tell you. The letters there are dated about the time that I had any communication whatever from Mr. Campbell.

Mr. DAVIDSON.—I will have this marked Complainant's Exhibit "O," for identification. (Marked).

Q. Mr. Conklin, I hand you letter on the letter head of Campbell, Metson & Campbell, attorneys at law, dated January 29, 1902, addressed N. E. Conklin, Bakersfield, California, and signed J. C. Campbell. You may examine that letter and state whether or not you ever received it, and, if so, how, and if you know in whose handwriting J. C. Campbell is signed to that letter?

A. I received this letter about the date which it bears, through the United States mail.

Q. Is that letter in answer to a previous letter written by you to Mr. Joseph C. Campbell?

A. It is.

Q. Have you a copy of the letter which you wrote to Mr. J. C. Campbell? A. No, I have not.

Q. Have you the original in your possession?

A. No, I have not.

Q. You may state the contents of what you wrote to Mr. Campbell previous to receiving that letter?

Mr. FRASER.—Objected to as incompetent, irrelevant, and immaterial, not the best evidence. No demand has been made, so far as I know, for the production of the original letter.

Mr. DAVIDSON.—We at this time demand of counsel for the defendant Joseph C. Campbell that

(Testimony of N. E. Conklin.)

he produce the letter written by Mr. Conklin to Joseph C. Campbell, previous to January 29, 1902, to which this letter is an answer.

Mr. FRASER.—Counsel for the defendant Campbell states that [187—83] this is the first intimation that he has received that such demand would be made; that he lives in the City of Boise, Idaho, that the defendant lives in San Francisco; that he has no correspondence whatever in his possession of the character called for, and the demand is not made in accordance with the rules of this court, and therefore it is impossible to produce the same.

Mr. DAVIDSON.—You may state the contents of the letter.

Mr. TIPTON.—Prove that Mr. Campbell was beyond the jurisdiction of this court.

Mr. DAVIDSON.—Q. Do you know whether or not the defendant J. C. Campbell—do you know where the defendant J. C. Campbell lives at this time? A. San Francisco, California.

Q. That is his residence? A. Yes.

Q. And has been, since the commencement of this action?

A. Part of the time he lived across the bay in Berkeley, and in Alameda, I think, but he has lived around the bay all this time.

Q. Do you know whether or not he is now within the jurisdiction of this court?

A. I don't know; I haven't seen Mr. Campbell for a long while.

Q. He does not at this time reside within the juris-

(Testimony of N. E. Conklin.)

diction of this court, or within the state of Idaho?

A. He does not.

Q. You may state what was the contents of the letter which you wrote—

Mr. FRASER.—I desire to ask the witness a question. [188—84]

Q. You are one of the attorneys for the complainant in this case? A. Yes.

Q. And have been since it was started? A. Yes.

Q. And you reside in the same state as the defendant Joseph C. Campbell? A. Yes.

Q. You have made no demand upon Joseph C. Campbell, have you, for the production of these letters? A. No.

Q. You have made no demand upon his attorney, Alfred A. Fraser, of Boise City, Idaho? A. No.

Mr. FRASER.—The record shows the fact that Alfred A. Fraser has been the attorney for Joseph C. Campbell since a short time after the filing of this complaint. We still insist upon our objection that no foundation has been laid for the introduction of the documents which the witness is asked to testify regarding.

Mr. DAVIDSON.—Q. You may state now, Mr. Conklin, the contents of the letter written by you to Mr. Joseph C. Campbell, to which the letter marked Complainant's Exhibit "O," is a reply.

Mr. FRASER.—I object to the question for the same reasons set forth just—the same objection set forth to the other question, hereby repeated.

WITNESS.—I wrote to Mr. Campbell stating that I had a party at Bakersfield who had offered to buy

(Testimony of N. E. Conklin.)

the Monache lands, and wanted to know if he would co-operate with me in the sale to this party, and this letter answered that.

Mr. DAVIDSON.—Q. Are you acquainted with the handwriting of the defendant [189—85] J. C. Campbell? A. I am.

Q. You may state whether or not that is his handwriting in the letter :

A. That is his handwriting.

Mr. DAVIDSON.—We now offer in evidence Complainant's Exhibit "O," as identified by the witness.

Mr. FRASER.—No objection.

Mr. DAVIDSON :

Complainants' Exhibit "O."

"Joseph C. Campbell,
William H. Metson,
Robert W. Campbell.

CAMPBELL, METSON & CAMPBELL,
Attorneys at Law,
115 to 122 Crocker Building, San Francisco.

January 29, 1902.

Mr. N. E. Conklin,
Bakersfield, Cal.

Dear Sir :

Yours of the 28th at hand. I do not exactly understand or comprehend the proposition which you make. Is it that a man wants to step into Benson's shoes and take this property to sell, and pay us the money as fast as he sells it, or what? Will he buy Mrs. Reddy's land outright and take his chances?

(Testimony of N. E. Conklin.)

Who is the man? I want to know all about it before I would be willing to make any proposition pro or con. I wish you would find someone that would buy Mrs. Reddy out of the entire matter, and then let this man and yourselves take it up. I apprehend that more money than \$4.00 an acre might be made out of it by people who could handle it properly, but it is in the Estate and we are not situated to handle it as it ought to be.

Yours very truly,

J. C. CAMPBELL." [190—86]

Mr. DAVIDSON.—Q. After receiving the letter marked Complainant's Exhibit "O," did you have any further correspondence with the defendant J. C. Campbell in regard to this matter? A. I did.

Q. About when, Mr. Conklin?

A. I can't remember the date. I can only remember from refreshing my mind from the letter.

Mr. DAVIDSON.—I will have this marked as Complainant's Exhibit "P," for identification. (Marked.)

Q. Mr. Conklin, I hand you letter marked Complainant's Exhibit "P," for identification, written upon the stationery of Campbell, Metson & Campbell, attorneys at law, dated October 27, 1902, addressed to Norman Conklin, Esq., Bakersfield, California, and signed J. C. Campbell. You may examine this letter and state how you received it, and if you know whose handwriting the name J. C. Campbell, and the written portion on the bottom is in.

A. I received this letter about the date which it bears, in the United States mails, and it is signed by

(Testimony of N. E. Conklin.)

J. C. Campbell; the writing right below which is written by Mr. Metson.

Q. That is, the writing below his is the writing of Mr. Metson?

Mr. FRASER.—I object to the last statement made by the witness, for the reason that no foundation is laid.

WITNESS.—I knew Mr. Metson's handwriting, have seen him write, have received letters from him, and that is his writing.

Mr. DAVIDSON.—Q. Is that Mr. W. H. Metson the Metson who is a member of the firm of Campbell, Metson & Campbell? A. The same. [191—87]

Q. Was that letter written to you in response to a letter previously written by you to Mr. J. C. Campbell? A. Yes.

Q. Do you remember about when?

A. No; this letter was written on his own volition.

Q. Was it written in response to any letter written by you?

A. Yes, I wrote to Mrs. Patrick Reddy.

Q. That letter was written then and refers to the letter written by you to Mrs. Emily M. Reddy?

A. It is.

Mr. DAVIDSON.—We offer the letter in evidence as Complainant's Exhibit "P."

Complainants' Exhibit "P."

"Joseph C. Campbell,
William H. Metson,
Robert W. Campbell.

CAMPBELL, METSON & CAMPBELL.

Attorneys at Law,
115 to 122 Crocker Building,
San Francisco,

October 27, 1902.

Norman Conklin, Esq.,
Bakersfield, Cal.

Dear Sir:

Your letter of late date to Mrs. Reddy, has been shown me.

You evidently have forgotten that I wrote you some months since stating to you that the moment that you could do any better with the Monache property than we are doing, you were at liberty to do so. I also wrote to your friend there who said he could dispose of the property and told him that we were willing to let him do so, and that so far as the matter being in the hands of Mr. Benson, it was not in such a way but what it could be taken out at once.

Now, if you can do any better, you are at perfect liberty to do so; and not only that, but we will join with you [192—88] in the endeavor to get the most for the property and dispose of it at as early a date as possible; but I would suggest that after you have been so informed, you do not annoy your Aunt Em. by a letter of the character that yours of the 15th is.

(Testimony of N. E. Conklin.)

If you will look up your correspondence, you will find what I say to be true.

Very truly yours,

J. C. CAMPBELL.

I did not think it wise that Mr. Conklin should send any written snarls. If he can and will do something it would please me. However I don't think he should unnecessarily annoy Mrs. Reddy, whatever his views.

W. H. METSON."

Mr. FRASER.—I desire to object to the postscript which counsel has read, for the reason that it is incompetent, irrelevant and immaterial, and hearsay, and there is nothing to show that it was made in the presence of, or within the knowledge of, the defendant J. C. Campbell.

Mr. DAVIDSON.—Q. Mr. Conklin, do you know whether or not, on the 27th of October, 1902, William H. Metson, who wrote the postscript on Complainant's Exhibit "P," was a partner of the defendant J. C. Campbell? A. Yes, he was.

Mr. FRASER.—I object to that as incompetent, irrelevant, and immaterial.

Mr. DAVIDSON.—Q. Mr. Conklin, when did you first learn of the existence of any powers of attorney purporting to have been given by Mollie Conklin and Emily M. Reddy and Edward A. Reddy as administratrix and administrator of the estate of Patrick Reddy, deceased, in regard to the sale and disposal of lieu lands? [193—89]

A. I first learned that alleged powers of attorney were in existence about July, 1902.

(Testimony of N. E. Conklin.)

Q. From whom did you receive such information?

A. From an attorney in Washington.

Q. Washington, D. C.?

A. Washington, D. C.

Q. After you learned that the deeds to the Monache lands were of record in the recorder's office of Tulare and Inyo counties, California, did you ever inquire of the defendant Joseph C. Campbell how they had come of record? A. I did not.

Q. Did you see him during that time?

A. I wasn't in San Francisco.

Q. When did you first learn, Mr. Conklin, that applications had been made for the selection of lieu lands in lieu of the Monache lands, as conveyed to the Government by the deeds which you found of record in Inyo and Tulare counties, California?

A. I think about the same time I discovered the powers.

Q. And from what source did you receive the information as to the application for the selection of lieu lands? A. An attorney in Washington.

Q. You may state what you did with reference to these selections, after learning that such selections were pending.

A. I wrote to the State land office first. I didn't know the method of procedure, so I wrote to the State land office in the State of California, notifying them not to do anything further in regard to these lands. I received no reply, and I next got a list of the lands from the land department at Washington. Then, I hunted up from the map the sections and townships and found out where the selected lands were located,

(Testimony of N. E. Conklin.)

and in that way discovered where the selected lands were [194—90] situated.

Q. About when did you find that any of the lieu lands had been selected in the State of Idaho?

A. At the time when I made this investigation, from the description sent me from Washington.

Q. About what time did you find that the selections had been made in Idaho?

A. I would have to refresh my memory from some of the papers.

Q. Any of the papers here, Mr. Conklin?

A. I guess I discovered it the same time I did the powers—no, I did not—afterwards.

Q. Now, did you afterwards write any letters to the defendant J. C. Campbell in regard to the whereabouts of the deeds of the Monache lands, or to any member of the firm of Campbell, Metson & Campbell?

Mr. FRASER.—I object to that. The letters are the best evidence of their contents.

Mr. DAVIDSON.—I asked only for letters in regard to the Monache lands.

Mr. FRASER.—I insist upon my objection.

WITNESS.—I couldn't recall unless I see the letter.

Mr. DAVIDSON.—We will have this marked Complainant's Exhibit "Q," for identification. (Marked.)

Q. Mr. Conklin, I hand you letter marked Complainant's Exhibit "Q," for identification, on the stationery of the firm of Campbell, Metson & Campbell, dated at San Francisco, November 7th, 1902, addressed to N. E. Conklin, and signed W. H. Metson,

(Testimony of N. E. Conklin.)

You may examine that letter and state whether or not you received it, and, if so, how, and if you know in whose handwriting the name Metson, W. H. Metson is. [195—91]

A. Yes, I recognize the letter as one which I received through the United States mails, at about the date it bears. It is signed by W. H. Metson.

Q. Do you know Mr. W. H. Metson's handwriting?

A. Yes.

Q. Was Mr. Metson, at the time of writing that letter, a member of the firm of Campbell, Metson & Campbell, and a partner of Mr. J. C. Campbell?

A. He was.

Mr. FRASER.—We object to that as incompetent, irrelevant and immaterial.

Mr. DAVIDSON.—Q. Was that letter written in reply to a letter previously written by you to Mr. Metson?

A. It was.

Mr. DAVIDSON.—We offer the letter in evidence, as Complainant's Exhibit "Q."

Mr. FRASER.—We object to it as incompetent, irrelevant, and immaterial, and hearsay evidence, not shown to have been written in the presence of, and the contents were never known or made known to the defendant J. C. Campbell.

Mr. DAVIDSON.—Q. I show you Complainant's Exhibit "Q"—

Mr. DAVIDSON.—I will read the letter:

(Testimony of N. E. Conklin.)

Complainants' Exhibit "Q."

"Joseph C. Campbell,

William H. Metson.

Robert W. Campbell.

CAMPBELL, METSON & CAMPBELL,

Attorneys at Law,

115 to 122 Crocker Building,

San Francisco.

San Francisco, November 7, 1902.

N. E. Conklin, Esq.,

Bakersfield, Cal.

Dear Conklin: [196—92]

Replying to your letter of October 15th, 1902, which was delayed in reaching me: The matter that you refer to never was in the office of Campbell, Metson & Campbell, so far as Metson was concerned. I have never taken any part in the matter, except to make some enquiries from time to time and state the matter to Mr. J. C. Campbell, and Mr. J. C. Campbell is anxious to get rid of the affair and reports that advances have been made and costs paid out. The thing for you to do, I take it, is to come to San Francisco, see Mr. Campbell and have the matter straightened out.

Yours truly,

W. H. METSON."

Q. You say, Mr. Conklin, that you had, previous to this date, written to Mr. W. H. Metson, a partner of Mr. J. C. Campbell, a letter in regard to the Monache lands? A. I had.

Q. Have you a copy of that letter?

(Testimony of N. E. Conklin.)

A. I have not. I didn't keep any copy.

Q. Have you the original in your possession?

A. I have not.

Q. Where does W. H. Metson reside?

A. I am not certain. He resides either in Alameda County, or the City and County of San Francisco, State of California.

Q. Is he a resident of the State of Idaho, within the jurisdiction of this court, at this time?

A. He is not.

Q. Was Mr. W. H. Metson at the time of the writing of the letter, Complainant's Exhibit "Q," a partner of the defendant J. C. Campbell?

Mr. FRASER.—Objected to as incompetent, irrelevant, and immaterial. The witness hasn't shown himself competent to testify, and it is asking for the conclusion of the witness. [197—93]

A. He was.

Mr. DAVIDSON.—Q. You may state the contents of your letter, written to Mr. W. H. Metson, to which the letter, Exhibit "Q," is in reply.

Mr. FRASER.—I object to it as incompetent, irrelevant and immaterial, and secondary evidence, no proper foundation having been laid for the introduction of secondary evidence.

WITNESS.—It was a letter denouncing the actions of the firm in regard to the Monache matters.

Mr. FRASER.—I move to strike out the answer, for the reason that the same is incompetent, irrelevant and immaterial, and no foundation has been laid for the introduction of the same.

Mr. DAVIDSON.—Q. Mr. Conklin, did you ever

(Testimony of N. E. Conklin.)

make any inquiries or have any inquiries made as to the bank in which the deeds to the Monache lands were placed in escrow, according to the agreement had at the office of J. C. Campbell?

A. I made efforts to find out where they were placed in escrow and where they were in escrow.

Q. Did you receive information as to any bank in which they might have been placed? A. I did.

Q. What inquiry did you make?

A. My sister wrote me that she had—

Mr. FRASER.—I object to the witness testifying to hearsay evidence.

Mr. DAVIDSON.—Q. You heard the testimony of your sister, Mrs. Olcese?

A. I did.

Q. You heard the statement made by her of the information she received at the office of Campbell, Metson & Campbell, that the papers were placed in escrow with the Anglo-California [198—94] Bank.

A. I did.

Q. Did your sister communicate that intelligence to you?

Mr. FRASER.—I object to it as incompetent, irrelevant, and immaterial.

WITNESS.—She did.

Mr. DAVIDSON.—Q. After receiving that information, did you make any inquiry from the Anglo-California Bank as to whether or not the papers were in escrow in that bank? A. I did.

Mr. DAVIDSON.—I will have these marked as Complainant's Exhibits "R" and "S," for identification. (Marked.)

(Testimony of N. E. Conklin.)

Q. Mr. Conklin, I call your attention to Complainant's Exhibit "R" for identification. You may state what that is, if you know.

A. That is a copy of a letter which I wrote to the Bank of California.

Q. Is that a carbon copy of the letter which you sent? A. Yes.

Q. Did you mail that letter to the Bank of California? A. I did.

Q. Did you receive a reply? A. I did.

Q. What was the reply?

A. I haven't the reply; it is lost.

Q. Have you made a search for the reply you received from the Bank of California in reply to your letter, Exhibit "R"?

A. I have searched amongst all of my papers.

Q. Were you able to find that letter?

A. I couldn't find it.

Q. Can you now produce that letter? [199—95]

A. I cannot.

Mr. DAVIDSON.—We offer in evidence Complainant's Exhibit "R," carbon copy of a letter dated at Bakersfield, California, June 13th, 1902, addressed to the Bank of California, San Francisco, California.

Mr. FRASER.—Objected to as incompetent, irrelevant, and immaterial; it doesn't tend to prove any of the allegations of the bill, and for the further reason that it is secondary evidence, and no proper foundation has been laid for its introduction.

Q. The original of that letter I believe you sent to the bank of California? A. I did.

Q. Did you make a demand on the Bank of Cali-

(Testimony of N. E. Conklin.)

fornia for the original? A. No, I did not.

Q. It may be in their office so far as you know, yet?

A. Yes.

Mr. FRASER.—I object to it as secondary evidence.

Mr. DAVIDSON.—Q. This letter you say is a carbon copy of the original letter which you sent to the Bank of California? A. It is.

Mr. DAVIDSON.—We offer it in evidence, and ask to have it marked as offered. (Marked.)

Reading Complainant's Exhibit "R":

Complainants' Exhibit "R."

"Bakersfield, Cal., June 13th, 1902.

Bank of California,

San Francisco, Cal.,

Gentlemen:

In regard to the deeds placed in *escro* with your bank, in connection with sale of lands between my mother [200—96] Mollie Conklin and John A. Benson, will you please send me a statement of moneys received?

My mother is in the East and I have a general power of attorney which I will mail for your inspection, if you desire, or you can mail a statement to her address in San Francisco, which is in the Hotel Savoy.

Respectfully."

Q. Mr. Conklin, you stated that you received a reply to this letter, Exhibit "R," from the Bank of California? A. I did.

Q And that letter has been lost?

(Testimony of N. E. Conklin.)

A. That letter is lost.

Q. You may state the contents of the letter you received from the Bank of California, in reply to your letter marked Exhibit "R."

A. They stated that they could discover no such escrow amongst their papers.

Q. I hand you, Mr. Conklin, a letter marked Complainant's Exhibit "S," for identification. You may examine that letter and state what it is, if you know.

A. It is the original letter which I wrote to the Anglo-California Bank.

Q. What, if anything else, is shown upon that letter? A. Their answer.

Q. Did you receive that letter and the answer written thereon from the Anglo-California Bank?

A. I received the same through due course of mail.

Q. And the part of that letter in typewriting, is that the original letter that you wrote?

A. That is the original letter which I wrote.

Mr. DAVIDSON.—We offer it in evidence, as Complainant's Exhibit "S." [201—97]

Mr. FRASER.—We object to it as incompetent, irrelevant, and immaterial, and not tending to prove any of the allegations of the bill.

Mr. DAVIDSON.—Reading Complainant's Exhibit "S":

(Testimony of N. E. Conklin.)

Complainants' Exhibit "S."

"Bakersfield, Cal., June 13th, 1902.

Anglo-California Bank,

San Francisco, Cal.

Gentlemen:

Please send me a statement of moneys received on account of deeds placed in *escro* with your bank in regard to lands concerned between myself and John A. Benson.

Respectfully,

MOLLIE CONKLIN.

By N. E. CONKLIN."

Marked June 14, 1902, with stamp. Also stamp marked "Received June 14, 1902, answered." The letter is written below: "Please give us more particulars. We cannot locate such escrow on our books. Anglo. J. B."

Q. Mr. Conklin, when did you first learn that any power of attorney had been given to any person in regard to the sale and disposal of lieu lands located and selected in the name of Mollie Conklin, and Emily M. Reddy, as administratrix, and Edward A. Reddy, as administrator, of the estate of Patrick Reddy, deceased?

A. I think about July, 1902.

Q. Did you at that time receive any information as to whom the powers of attorney were alleged to be made? A. I did.

Q. What powers of attorney did you at that time learn, as to the party to whom they were given?

A. C. L. Hovey.

(Testimony of N. E. Conklin.)

Q. Do you know where C. L. Hovey resided at that time? [202—98]

A. His office was in San Francisco.

Q. When did you first learn that any powers of attorney had been given to any parties to sell and dispose of lieu lands located in the name of Mollie Conklin and Emily M. Reddy and Edward A. Reddy, administratrix and administrator of the estate of Patrick Reddy, deceased, in the State of Idaho?

A. About—when I received the certified copies of the powers of attorney, I discovered that Cobban held powers of attorney—alleged powers of attorney—

Q. About what time was that?

A. That was about October, 1903. I would just like to refresh my memory—

Q. Yes.

A. That's right, 1903. I knew prior to that time that a man by the name of Cobban had powers of attorney, but I didn't know where they would be used until I received these certified copies

Q. Upon learning that any of the powers of attorney were being used in Idaho, what, if anything, did you do in regard to such powers of attorney?

A. Prior to that time I had discovered that lieu lands were located in Idaho, and immediately, not only in Idaho but in different portions of the country. When I made that discovery and found out what counties the lands were located in, I sent a general revocation of all powers of attorney, and recorded them in all of these different counties, but

(Testimony of N. E. Conklin.)

Hovey was the only man I knew who held a power of attorney at that time.

Q. Did you know at that time that any powers of attorney had been issued to R. M. Cobban?

A. Not at that time. Yes, I did know at that time—I will have to change my dates. [203—99]

Q. Make any statement you desire, Mr. Conklin, as to the dates.

A. I knew that Cobban held powers of attorney, as I stated, in October, 1903, when I received these certified copies.

Q. Did you know, in October, 1903? A. Yes.

Mr. DAVIDSON.—I will have this paper marked as Complainant's Exhibit "T," for identification. (Marked.)

Q. I hand you paper marked Complainant's Exhibit "T," for identification. You may state whether or not you know what—you may state what the paper is, if you know.

A. It is a general revocation of any and all powers of attorney.

Q. By whom is the paper signed?

A. My mother, Mollie Conklin.

Q. Did you see that paper signed? A. I did.

Q. Is that Mollie Conklin's handwriting?

A. It is.

Mr. DAVIDSON.—We offer in evidence, as Complainant's Exhibit "T," the instrument identified by the witness as revocation of powers of attorney, acknowledged on the 3d day of January, 1903, by Mollie Conklin, before A. C. Mande, notary public

(Testimony of N. E. Conklin.)

in and for Kern County, California, and recorded at the request of N. E. Conklin, on the 16th day of January, 1903, in book 3 of powers of attorney, at page 98, of the records of Boise County, Idaho.

WITNESS.—Mr. Davidson, the only method I have of remembering these dates is by these papers, and I see I have got the thing mixed up there. This revocation was recorded and executed in January, 1903. Now, it was in October that, as I see by my bill for the certified copies, in 1903, in which I knew that [204—100] Cobban was holding power of attorney here.

Q. Did you, at the time that you recorded this revocation here, know that R. M. Cobban, the defendant, held any of the alleged powers of attorney from your mother, Mollie Conklin?

Judge RICHARDS.—Objected to as not tending to prove or disprove any of the issues in this case, and as not applicable to any of the defendants here.

Mr. DAVIDSON.—We offer in evidence Complainant's Exhibit "T," identified by the witness, together with the endorsements thereon.

Judge RICHARDS.—I want to get my objection in to every offer.

Mr. DAVIDSON:

Complainant's Exhibit "T."

"KNOW ALL MEN BY THESE PRESENTS, That I, Mollie Conklin, a widow, of the City and County of San Francisco, State of California, do hereby wholly revoke, cancel and annul, any, all and every Power of Attorney, and any Authority of

(Testimony of N. E. Conklin.)

Agency of every description, of any kind or any nature, executed by me, or claimed to have been executed by me, and all that show, or claim to be irrevocable on their face, are canceled and annulled and denounced as fraudulent, particularly one given or in name of C. L. Hovey.

No person whosoever, is authorized to act for me or in my place or stead, excepting N. E. Conklin, of the City of Bakersfield, County of Kern, State of California, who holds a Power of Attorney from me, and which Power is excepted from this revocation.

MOLLIE CONKLIN. [Seal]

State of California,
County of Kern,—ss.

On this 3d day of January, A. D. 1903, before me, [205—101] A. C. Mande, a Notary Public in and for said county and state, residing therein, duly commissioned and sworn, personally appeared Mollie Conklin, a widow, known to me to be the person whose name is subscribed to the within instrument, and she acknowledged to me that she executed the same.

Witness my hand and official seal.

[Seal]

A. C. MANDE,

Notary Public in and for said Kern County, State of California.”

Mr. DAVIDSON.—Q. Mr. Conklin, did you ever make any tender on behalf of your mother, Mollie Conklin, to the defendant John A. Benson, to repay the sum of \$2,750.00, paid on the purchase price of the Monache lands? A. I did.

(Testimony of N. E. Conklin.)

Q. In what form was that tender made?

A. In the form of a letter.

Mr. DAVIDSON.—I ask to have these three papers marked as Complainant's Exhibit "U-1," "U-2," and "U-3," for identification, the three papers being attached together. (Marked.)

Q. Mr. Conklin, I hand you paper marked Complainant's Exhibit "U-1," for identification

A. "U-1" is a letter which I wrote to John A. Benson, Esq.

Q. Is it an original letter or a copy?

A. It is a copy.

Q. Is it a carbon copy of a letter?

A. No, it is the original—it is the original type-writing; but I mailed him the carbon copy.

Mr. FRASER.—Q. You mean the duplicate?

A. Yes. [206—102]

Mr. DAVIDSON.—Q. Did you mail that in the United States mail to the defendant John A. Benson? A. I did.

Q. You may state what Exhibit "U-2" is.

A. "U-2" is the postoffice receipt.

Mr. FRASER.—I object to that; it speaks for itself; it is the best evidence of what it is.

WITNESS.—It is the receipt which I received from the postoffice for this letter which I sent to Mr. Benson.

Mr. DAVIDSON.—Q. Was that letter sent by registered mail? A. It was.

Q. What is "U-3"? A. It is the receipt which—

Mr. FRASER.—I object to that, because "U-3"

(Testimony of N. E. Conklin.)

states itself what it is, and is the best evidence.

WITNESS.—This is the receipt which I received in return through the mail for the letter which I had theretofore written.

Mr. DAVIDSON.—We offer in evidence Complainant's Exhibits "U-1," "U-2," and "U-3," as identified by the witness.

Mr. FRASER.—Objected to as incompetent, irrelevant, and immaterial; they do not tend to prove or disprove any of the allegations of the bill, and for the further reason that they do not constitute any legal tender, and for the third reason that Exhibit "U-1" is secondary evidence, and no proper foundation has been laid for its introduction, and for the further reason that no tender is made good or kept good in this court in this action.

Mr. DAVIDSON.—By agreement of counsel the stenographer can transcribe the exhibits into the record without reading them here. [207—103]

Mr. FRASER.—Yes, the stenographer can transcribe them into the record.

Complainants' Exhibit "U-1."

"To John A. Benson, Esq.,
No. 507 Montgomery Street,
San Francisco, Cal.,

Dear Sir: I hereby tender payment to you of the sum of twenty-seven hundred and fifty dollars (\$2,750.00), the same being money which I have received from you under a misunderstanding upon my part, of the true status of affairs in relation to certain lands known as the Monache lands, and which said

moneys was paid to me under misrepresentations of said affairs and misstatements of the true facts, and I now offer to pay the same to you.

Said money will be paid to you or your order upon your clearing the title to the said lands, which title you have attempted to cloud, and this also includes equities in lands and lieu lands arising from said lands.

Said money will be paid to you upon your notification to me that you have so cleared said titles, and after my investigating the same, by the Canadian Bank of Commerce at San Francisco, Cal.

Respectfully yours,

MOLLIE CONKLIN.

Dated at Bakersfield, Kern County, Calif., this 28th day of April, 1903."

Complainants' Exhibit "U-2."

Letter }
"Registered Parcel } No. 1995 Post Office,

Class

Ex. 01.

This space is reserved on counterpart for particulars connected with dispatch of registered piece.

Received 4/30, 1903, from N. E. Conklin a letter addressed John A. Benson, San Francisco, Cal.

Postmaster, per W. [208—104]

Complainants' Exhibit "U-3."

"Registry Return Receipt. Form No. 1548. Received from the Postmaster at San Francisco, Cal.

Registered Letter No. 1995, from Bakersfield, Kern Co., Cal.

Addressed to John A. Benson.

Date May 1st, 1903.

JOHN A. BENSON. 70741

(Signature of name of addressee.)

C. E. GLOVER,

(Signature of addressee's agent.)

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

A registered article must not be delivered to anyone but the addressee, except upon the addressee's written order.

When the above receipt has been properly signed, it must be postmarked with name of delivering office and actual date of delivery and mailed to its address, without envelope or postage. Ex. "02."

(Reverse side of card.)

This card must be neatly and correctly made up and addressed at the postoffice where the article is registered.

The postmaster who delivers the registered article must see that this card is properly signed, postmarked, and mailed to the sender.

Postmark of delivering office

San Francisco, Cal., May 1, 1903.

and date of delivery

Post Office Department,

Official Business.

Penalty of \$300 for private use. [209—105]

(Testimony of N. E. Conklin.)

Return to:

Name of Sender, N. E. Conklin,

Post Office at Bakersfield, Kern Co., Cal.

State _____”

Mr. DAVIDSON.—Q. Mr. Conklin, are you familiar with your mother’s financial condition?

A. I am.

Q. You may state whether or not the complainant Mollie Conklin is able to repay all moneys heretofore paid her by John A. Benson on the purchase and sale of the Monache lands.

Mr. FRASER.—We object to that as incompetent, irrelevant and immaterial, for the reason that it does not tend to prove any of the allegations of the bill, and calls for a conclusion of the witness. He hasn’t shown himself competent to testify to that fact.

WITNESS.—She is.

Mr. DAVIDSON.—Q. You may state, Mr. Conklin, what tender, if any, has been made to the defendant John A. Benson, as to the repayment of moneys previously paid by him on the purchase of the Monache lands.

A. I had the money in the Canadian Bank of Commerce, San Francisco, at the time I wrote that letter.

Q. Did you ever receive any reply from the defendant Benson to the letter identified by you, Complainant’s Exhibit “U-1”?

A. I did not.

Q. Did he ever make any objection to the tender made by you for Mollie Conklin? A. Never.

(Testimony of N. E. Conklin.)

Q. Did he ever offer to return to Mollie Conklin the lands [210—106] known as the Monache lands, as conveyed?

A. Not that I know of—not to me.

Q. Mr. Conklin, do you know where your mother was residing from early in December, 1900, up till the month of June or July, 1901? A. I do.

Q. Where was she residing?

A. She arrived at my house about the 2d or 3d of December, 1900, and remained there all winter and until spring, after which she went to Santa Barbara, where I saw her—that is the southern part of the state—and she also went to Catalina Island and Los Angeles.

Q. Where were you residing at the time your mother came to your house?

A. In Bakersfield, Kern County, California.

Q. How far from San Francisco?

A. About 311 miles.

Q. During that time did your mother return to San Francisco, San Francisco County, California?

A. She did not.

Q. Do you know when she did return there, after coming to your house, in December, 1900?

A. She returned in the fall of 1901, about September.

Q. Mr. Conklin, at the time of the conference in Mr. Campbell's office, in August or September, 1900, was the name of R. M. Cobban mentioned by any party at that meeting?

A. Never mentioned; I never heard the name until

(Testimony of N. E. Conklin.)

I saw it written, in 1902, I believe.

Mr. DAVIDSON.—That is all. [211—107]

Cross-examination.

(By Mr. FRASER.)

Q. At the meeting in Mr. Campbell's office, do you remember the date of that meeting, when you were all present? A. No, I don't.

Q. It was in August or September, 1900?

A. It was in either July or August.

Q. 1900? A. 1900.

Q. That is the time that Mollie Conklin and Mrs. Reddy, yourself, Mr. Campbell and Mr. Benson were present? A. And Mrs. Coleman.

Q. That is the meeting you have reference to?

A. Yes.

Q. Is that the only meeting you were present at in the office of Campbell, Metson & Campbell?

A. That is the only meeting I was ever present at.

Q. In Mr. Campbell's office?

A. Or in anybody else's office, in regard to the sale of these lands.

Q. That is the only meeting which you attended at which this matter was discussed by anybody?

A. Yes.

Q. Had you been in Mr. Campbell's office before?

A. Whenever I would come down to the city I would go down to the office.

Q. When was it that Mr. Reddy died?

A. Mr. Reddy died in June, June 26th.

Q. You stated that it was April or May, in your direct examination.

(Testimony of N. E. Conklin.)

A. Ned Reddy died in April, the 10th of April, 1901.

Q. Mr. Reddy was your uncle? [212—108]

A. By marriage, yes.

Q. Prior to his death, you used to frequently go into the office?

A. Yes, I did; I studied law a great deal under him.

Q. After this meeting of July or August, when was the next time you were in Mr. Campbell's office?

A. The next time I went to Mr. Campbell's office was when I went with Mrs. Reddy, in 1904.

Q. That was the only other time that you remember of being present in that office? A. Yes.

Q. Did you see Mr. Campbell that second time?

A. I did.

Q. Had you seen him at any time between those two times? A. Not that I remember of.

Q. Did you ever have any conversation with him between those times in regard to these matters which are in litigation here? A. No.

Q. Now, when you were all present at that meeting, in July or August, when this matter was discussed, of the sale of these lands, did you all take part in the discussion of the terms of the contract, the conditions, etc.?

A. Yes, more or less, but Mr. Campbell did most of the talking.

Q. Did you make any suggestions in regard to it?

A. Yes.

Q. On whose behalf were you making those sug-

(Testimony of N. E. Conklin.)

gestions? A. On my mother's behalf.

Q. Was Mr. Benson represented there by an attorney? A. No.

Q. He was there alone as far as you knew?

A. Yes. [213—109]

Q. Now, you stated that Mr. Campbell was your mother's attorney in the settlement of the estate and in her private business, as I understood you.

A. The firm—sometimes she consulted Mr. Metson, and I did also.

Q. You didn't consult them any time, you stated, between the time of this first contract, this first meeting, in 1900, in July or August, 1900, until 1904?

A. No.

Q. Then, between those two dates you have no knowledge of whether he acted for your mother or not, have you, personally?

A. Excepting from his letters.

Q. Which you have introduced in evidence?

A. Yes.

Q. That is the information which you have on that subject? A. Yes.

Q. The term "base lands" has been used here, and you have used it, and I am not familiar with the term—we don't have much of it here. What do you mean when you use the term "base lands"?

A. I have since learned, since this transaction—at that time I didn't know anything about it, and for a long while afterwards I didn't, until I had occasion to investigate.

Q. You didn't know any more than I did then—

(Testimony of N. E. Conklin.)

you didn't know what the term "base lands" meant when you first— A. No, I did not.

Q. So when you talked about base lands you hadn't any idea what they meant by that term?

A. We didn't speak about it at that time, at the time of the negotiations.

Q. At the time you talked or wrote to Mr. Campbell, or had a talk with him, and he said that the base lands were in [214—110] the probate court, or something, and that it would be some trouble to get them out—

A. That was at the time of the negotiations. He stated at that meeting that he would have to obtain an order of sale of the Monache lands. That was the term we used in designating these lands, always.

Q. Now, did you keep your mother informed of all the facts which you discovered in regard to these transactions, the powers of attorney, and the recording of the deeds from herself to Benson, when you discovered that they had been recorded—did you inform her of that fact?

A. Yes, I discussed the proposition with her, but I didn't always inform her just at the time I made the discovery, because she wasn't with me. She was east a great portion of the time afterwards; in 1902, I believe, she was east.

Mr. FRASER.—I believe that is all.

Judge RICHARDS.—Q. You say you saw Mr. Cobban's name written first in 1902?

A. Yes, sir.

Q. What was the occasion of your seeing Mr. Cob-

(Testimony of N. E. Conklin.)

ban's name written at that time?

A. I wrote to an attorney in Washington, inquiring about these lands, after I discovered that deeds were on record, and he sent me a letter containing the names of the persons that held powers of attorney, in the land office at Washington.

Q. About what time was that?

A. I think that was about 1902—in July, the middle of the year. And, understand me, at that time he stated these powers were in relation to lands at Washington, not to convey the selected lands, but they were on file there at Washington—just gave me the names of the different parties.

Q. To what lands did those powers of attorney refer? A. He didn't state that. [215—111]

Q. You didn't know anything about that?

A. No, that was my difficulty, to find out where these parties were to exercise these powers.

Q. And then in 1903 you discovered where they were? A. Yes.

Q. And procured certified copies of those powers of attorney? A. Yes, I did.

Judge RICHARDS.—I believe that is all.

Mr. BLAKE.—Q. When were you admitted to the bar? A. About twelve years ago, I believe.

Q. That would be in 1898 then?

A. Yes, I think it was 1898.

Q. When did you first enter into the active practice of the law?

A. After I was admitted I was assistant district attorney in Kern County for two years, and was only

(Testimony of N. E. Conklin.)

engaged in criminal practice, prosecution, at that time.

Q. That was probably between 1898 and 1900 that you were assistant prosecuting attorney?

A. It was. You see I couldn't practice in that court in civil matters, because my father was judge, and that would disqualify me.

Q. You were actively engaged in the practice of criminal law? A. Yes.

Q. And were so engaged at the time of this meeting in 1900?

A. No, I was running a laundry—I had been promoted—I was in the laundry business. I had to get out of the district attorney's office because I was sick.

Q. And you afterwards resumed the practice of law? [216—112] A. Yes.

It was here stipulated by and between counsel for the complainants and counsel for the respective parties defendant that the Court shall make an order in this cause extending the time for the complainants to complete the taking of their testimony in chief until the 1st day of March, 1910, and also allowing the defendants sixty days from and after March 1st, 1910, in which to complete the taking of their testimony in defense herein, and that the complainants shall have a period of thirty days from and after the completion of the taking of the testimony for and on behalf of the said defendants in which to complete the taking of their testimony in rebuttal herein.

Mr. DAVIDSON.—That, gentlemen, is the testimony of these witnesses.

At this time, 5:10 P. M., January 3, 1910, the hearing was adjourned. [217—113]

[Examiner's Certificate to Testimony, etc.]

State of Idaho,

County of Ada—ss.

I, Robert M. McCracken, Special Examiner appointed by the Court to take evidence in the City of Boise in the above-entitled action, do hereby certify that the witnesses named in the foregoing transcript (consisting of pages 1 to 113, inclusive), attended before me, and that each of such witnesses was duly sworn to testify to the truth, and nothing but the truth, and in response to oral interrogatories testified as more fully appears from the foregoing transcript, which transcript, together with the exhibits therein referred to, contains all of the evidence so taken before me on behalf of the complainants, and all of the stipulations made, and objections and other proceedings had and taken before me on the trial of said cause, while taking such evidence.

Dated this 17th day of January, 1910.

(S.) ROBERT M. McCRACKEN,
Special Examiner.

[Endorsed]: Filed Jan. 17, 1910. A. L. Richardson, Clerk. [218]

[Testimony Taken at Boise, Idaho, June 24, 1910,
Before Special Examiner McCracken.]

*In the Circuit Court of the United States for the
District of Idaho, Central Division.*

THE UNITED STATES OF AMERICA, and
MOLLIE CONKLIN,

Complainants,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually
and Also as Trustee, PAYETTE LUMBER
& MANUFACTURING COMPANY, a Cor-
poration, JOHN DOE, MARY DOE, RICH-
ARD ROE and THOMAS ROE,

Defendants.

Testimony Taken at Boise, Idaho, June 24, 1910,
Before ROBERT M. McCracken, Special
Examiner.

APPEARANCES:

WM. B. DAVIDSON, for Complainant Mollie
Conklin.

S. L. TIPTON, Assistant U. S. Attorney, for Com-
plainant United States of America.

CAVANAUGH & BLAKE, for Defendant Payette
Lumber & Manufacturing Company. [219*—1†]

STIPULATION.

It is hereby stipulated and agreed by and between

*Page-number appearing at foot of page of certified Transcript of
Record.

†Original page-number appearing at foot of page of Testimony as
same appears in Certified Transcript of Record.

counsel for the respective parties hereto that the depositions of E. B. Weirick, R. M. Cobban, and E. M. Hoover, witnesses on behalf of defendants E. B. Weirick, Trustee, E. B. Weirick, R. M. Cobban, and Payette Lumber & Manufacturing Company may be taken without notice before Robert M. McCracken, Special Examiner, at the United States courtroom, at Boise, Idaho, on June 24th, 1910, and that the depositions of said witnesses may be taken in shorthand and transcribed, and that the said witnesses need not sign their testimony given by them.

[Testimony of E. B. Weirick, for Defendants.]

E. B. WEIRICK, called and sworn as a witness, testified as follows:

Direct Examination.

(By Mr. BLAKE.)

Q. State your name, place of residence, and occupation.

A. E. B. Weirick; Butte, Montana; Cashier of the First National Bank of Butte.

Q. I will ask you to examine this instrument, marked "Defendant Payette Lumber & Mfg. Co., and R. M. Cobban, and E. B. Weirick, individually and as trustee Exhibit A," and state whether or not that instrument was executed by you, and whether or not that is your signature that appears thereon.

A. Yes, sir, that is my signature.

Q. You may state whether or not this instrument, marked Defendants' Exhibit "A," was ever delivered to the Payette [220—2] Lumber & Manufacturing Company. A. It was.

Q. You may go ahead and state the circumstances

(Testimony of E. B. Weirick.)

under which it was delivered to the Payette Lumber & Manufacturing Company.

Mr. DAVIDSON.—We object to that on the ground that the deed shows for itself, and is the best evidence.

Mr. BLAKE.—It don't show for itself delivery.

Mr. DAVIDSON.—He states that he delivered it.

A. Well, the terms and conditions under which that deed was delivered was upon payment to us for the land described therein at the rate of eight dollars fifty-five and a quarter cents per acre.

Mr. BLAKE.—Q. State whether or not you were paid that amount per acre for the land described in that instrument marked Defendants' Exhibit "A."

A. I was.

Q. I will ask you, Mr. Weirick, for whom were you acting as trustee at the time of the execution of this deed?

A. I was representing, as trustee, Mr. John W. Cotter, J. S. Dutton, McRae & Solverson, E. B. Weirick, personally, S. B. Kemper, R. B. Cobban Realty Company, F. C. Berendes, Andrew J. Davis, John F. Forbis, J. H. Vivian, Charles W. Clark, F. T. McBride, R. H. Wearing, Augustus T. Morgan, George C. Fitschen and W. H. Hall.

Q. Was the consideration expressed in the deed the true consideration?

A. No, sir, it was not.

Q. The true consideration was what you have already stated, so much per acre? A. Yes, sir.

Q. Give the total amount which was paid for the

(Testimony of E. B. Weirick.)

land [221—3] described in this instrument marked Defendants' Exhibit "A."

A. \$96,544.12.

Q. That was the total amount paid for all the land described in the deed? A. Yes, sir.

Q. The amount paid, however, was based upon the amount which you stated that you paid?

A. \$8.55 $\frac{1}{4}$ per acre.

Q. For all of these lands? A. Yes, sir.

Q. Do you know whether or not, Mr. Weirick, any of the parties that you represented as trustee were at that time or thereafter stockholders in the defendant Payette Lumber & Manufacturing Company, or interested in that company in any way?

A. None of them were to my knowledge; no, sir.

Q. Were you at that time a stockholder or a promoter of the defendant Payette Lumber & Manufacturing Company, or did you have any interest in that company at that time? A. None whatever.

Q. Did you ever have any interest in it prior to that time? A. No, sir.

Q. You may state, Mr. Weirick, what information, if any, you had relative to the matter of the acquisition of the base lands by Benson or Cobban—

Mr. DAVIDSON.—We object to that as incompetent, irrelevant, and immaterial, and for the reason that the base lands are not involved in this case.

Mr. BLAKE.—Q. I refer to the base lands which were relinquished by the United States and the right given to select the lands set forth in the bill of complaint in this suit, as being lieu [222—4] lands, described as being lieu lands.

(Testimony of E. B. Weirick.)

Mr. DAVIDSON.—We object to that as incompetent, irrelevant, and immaterial, and for the reason that the base lands are not involved in this case, and it is not shown by any of the pleadings that any of the base lands were ever transferred to either the defendant Benson or the defendant R. B. Cobban.

A. Why, Mr. Cobban was acting as agent for the subscribers in this syndicate in purchasing lieu land scrip. He purchased from whomever he could buy at the market price. He acquired scrip from Benson and Hyde and a number of other parties who had this base or lieu land, or whatever it is called, for sale, and we had subscribed a certain amount of money which we wished to put in this land scrip. Mr. Cobban acquired it for us.

Mr. BLAKE.—The question, Mr. Weirick, was as to whether or not you had any further information,—not who acted for you, but what information did you have as to the manner in which it was acquired.

A. Well, I don't know that I had any particular information. I understood it was a commodity for sale, like most anything else.

Mr. DAVIDSON.—We move to strike out the answer as to what the witness understood as a conclusion and not a fact.

WITNESS.—You mean—?

Mr. BLAKE.—We will get at that in a different way now, Mr. Weirick.

Q. Did you ever know Mollie Conklin?

A. I never did.

Q. Did you ever know Campbell? A. No, sir.

(Testimony of E. B. Weirick.)

Q. Benson? A. No, sir.

Q. Did you know at that time what Mr. Benson's negotiations [223—5] were with Mollie Conklin in the acquisition of this lieu land scrip?

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, not tending to prove any issue in this case, and further, that the acts of the defendant Benson are not binding upon the plaintiff Mollie Conklin.

A. I did not.

Mr. BLAKE.—Q. I will ask you if you had any information or knowledge regarding the matter of the acquisition of this scrip, or this lieu land selection right, or these lieu land selection rights, other than was revealed to you by the powers of attorney which Mr. Cobban had, or other written instruments regarding the matter, which he had?

Mr. DAVIDSON.—We object to that as incompetent, irrelevant, and immaterial, and too indefinite, and for the reason that it refers to other written instruments that are not in evidence, and if any such instruments exist they will be the best evidence.

A. That is the only information I had, was what was furnished by the papers delivered by Mr. Cobban.

Mr. DAVIDSON.—By Mr. Cobban, or to Mr. Cobban? A. By Mr. Cobban to me.

Mr. BLAKE.—Q. Can you state the amount per acre which you paid Mr. Cobban for the lands described in this instrument marked Defendants' Exhibit "A"? A. No, sir, I cannot.

Q. Can you state it approximately?

(Testimony of E. B. Weirick.)

Mr. DAVIDSON.—We object to that; it is not material to any issue raised by the pleadings.

A. We paid nothing to Mr. Cobban. I paid out only on drafts authorized by Mr. Cobban to take up this scrip, Mr. Cobban, [224—6] realizing nothing out of it except his expenses.

Q. Did you pay anything for this scrip or this land selection right? A. Yes, sir.

Q. How much per acre?

A. Well, it varied. We bought scrip all over the country, and sometimes I suppose we paid from \$4.00 up to,—well, I think we paid over \$5.00 for some of our scrip.

Q. The market price varied from time to time, did it? A. Yes, sir.

Q. Well, state whether or not you paid the market price for this.

A. We paid the market price for it.

Mr. DAVIDSON.—We object to it as incompetent, irrelevant and immaterial; this is not the way of establishing the purchase price paid for something that was actually purchased. It is not alleged that they paid the market price.

Mr. BLAKE.—Q. State whether or not you paid full value for it.

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, and it is not shown that the witness is qualified to testify.

Mr. TIPTON.—And another objection,—it is a conclusion.

A. We paid the market price for the scrip.

Mr. BLAKE.—Do you know what the market

(Testimony of E. B. Weirick.)

price was at that time?

A. Mr. Cobban kept posted.

Q. Your representative? A. Yes, sir.

Mr. DAVIDSON.—We move to strike out the answer of the witness as it shows upon its face that he had no personal knowledge of the facts. [225—7]

Mr. BLAKE.—Q. State whether or not, Mr. Weirick, you were in any way representing any stockholder of the Payette Lumber & Manufacturing Company, or the company itself, or any promoter of the company, in purchasing the lands described as lieu lands in the bill of complaint or amended bill of complaint herein.

A. I did not. I represented only the parties named previously.

Mr. BLAKE.—I now offer this instrument marked Defendants' Exhibit "A" in evidence.

Mr. DAVIDSON.—We object to the introduction in evidence of the deed marked Defendants' Exhibit "A," on the ground, first, that the answer of the defendant Payette Lumber & Manufacturing Company does not show that the vendor therein named was possessed of a fee simple title to the property described therein, does not allege that the said defendant Payette Lumber & Manufacturing Company were bona fide purchasers at the time of the delivery of the deed offered in evidence, and for the further reason that the answer of the defendant Payette Lumber & Manufacturing Company does not allege facts sufficient to entitle the said defendants to plead that they are bona fide purchasers of the lands described in the deed and referred to in the amended

(Testimony of E. B. Weirick.)

bill of complaint herein, and for the further reason that the deed shows upon its face that it is a deed executed by the trustee, and it is not shown that the said trustee at the time of executing the deed was acting under the authority and instructions of those for whom he was acting as trustee. And for the further reason that the pleadings show that the land in question was patented in the name of Emily M. Reddy and Edwin A. Reddy, administratrix and administrator of the estate of Patrick Reddy, deceased, and that the title attempted to be conveyed must be predicated upon and a record [226—8] of a court of competent jurisdiction and the settlement of the estate; and it is not shown that the instrument or the sale of the property was ever authorized by any court having jurisdiction; and for the further reason that it is not shown by the evidence that the grantor, E. B. Weirick, trustee, had any title to any of the property described in the deed and referred to in the complainant's amended bill of complaint herein.

Mr. BLAKE.—Q. State whether or not you conveyed this property with the knowledge and consent of those for whom you were acting as trustee.

A. I did.

Mr. DAVIDSON.—We move to strike that answer out, until we get time to object. We object to it as incompetent, irrelevant and immaterial, and not the proper way of proving the right and authority to transfer real estate, that being a matter that would have to be in writing under the statute, and not the best evidence, and it is a self-serving declaration.

(Testimony of E. B. Weirick.)

Cross-examination.

(By Mr. DAVIDSON.)

Q. Mr. Weirick, I believe you stated that the defendant R. M. Cobban was one of the parties for whom you were acting as trustee in executing the deed marked Defendants' Exhibit "A"?

A. R. M. Cobban Realty Company.

Q. Well, Mr. Weirick, you are one of the defendants in this case? A. I am.

Q. You filed an answer in this court jointly with the defendant R. M. Cobban.

A. Yes, sir, I believe so.

Q. If that answer alleges that you are acting as trustee [227—9] for R. M. Cobban and yourself and others, is that true or untrue?

A. I was acting for R. M. Cobban Realty Company, as trustee.

Q. Do you know who the members of the R. M. Cobban Realty Company were?

A. I know that Mr. Cobban was one of the members.

Q. Now, Mr. Cobban was acting as agent for yourself and your associates and himself in the purchase of all of this lieu scrip, or right to select lieu lands, described in the plaintiff's amended bill of complaint, was he not? A. Yes, sir.

Q. And at that time he purchased the first of these lieu land rights he did so with the express agreement that any titles conveyed would be conveyed to you as trustee? A. Yes, sir.

Q. And you and Mr. Cobban, and those with whom you were associated, furnished the money that was

(Testimony of E. B. Weirick.)

used to purchase this scrip, as you call it, from time to time? A. Yes, sir.

Q. And it was purchased for the purpose of transferring it to you? A. Yes, sir.

Q. As I remember, Mr. Weirick, the first of the lieu subscriptions involving the land herein was purchased by Mr. Cobban on or about the 19th day of February, 1901. Is that correct?

A. I can't tell the exact date of the first purchase. The first call from our subscribers was made on February 18th, 1901, for payment into my hands as trustee. [228—10]

Q. And if your answer shows that the first purchase was made on the 19th day of February, 1901, that would be correct, would it not, Mr. Weirick?

A. I think so.

Q. Now, your agreement between yourself, Mr. Cobban and your associates, for the purchase of these rights, was made long prior to that time, was it not, that is, prior to the 19th of February, 1901?

A. Yes, sir.

Q. And Mr. Cobban continued to buy land for himself, yourself, and your associates, up till about the 20th of June, 1901, did he not, that is, the lands involved in this controversy?

A. Well it ran over a period of several months,—I couldn't tell.

Q. And if your answer set forth that the last was purchased on or about the 23d day of June, 1901, that would be approximately correct?

A. I think so.

Q. This agreement was, in effect between the par-

(Testimony of E. B. Weirick.)

ties from prior to the time the first purchase was made of the lieu land selections involved in the Conklin-Reddy matter until after the final purchase had been made? A. Yes, sir.

Q. And during all of that time there was an agreement between yourself and Mr. Cobban and your associates that all titles acquired under any selections and under any other instruments should be transferred to you as trustee, without further consideration? A. Yes, sir.

Q. And you furnished, you and your associates, being yourself and Mr. Cobban and others, furnished the money that [229—11] was used by Mr. Cobban in acquiring all of this lieu scrip? A. Yes, sir.

Q. And do I understand that thereafter Mr. Cobban did transfer all of this land to yourself?

A. Yes, sir.

Q. And at the time he transferred it did you pay him anything? A. No, sir.

Q. No consideration was paid? A. No, sir.

Q. Now, Mr. Weirick, did you personally, at the time of the delivery of the various lots of papers involving these tracts of land involved in this suit examine the papers that were delivered to Mr. Cobban?

A. I did not.

Q. Then, as I understand, Mr. Cobban was simply the agent for himself, yourself and others, for the purpose of securing title to this land and afterwards transferring it to you, or procuring the transfer to you? A. Yes, sir.

Q. Did you negotiate the sale of this land from yourself, as represented by Defendants' Exhibit

(Testimony of E. B. Weirick.)

“A,” to the defendant Payette Lumber & Manufacturing Company?

A. Well, the negotiations,—the option was given the Payette Lumber & Manufacturing Company, and with the knowledge of myself and my associates.

Q. That option was given them before the execution of the deed? A. Yes, sir.

Q. Do you remember the date of the execution of the option on the lands involved in this controversy?

A. Well, the option was given, I think,—my recollection [230—12] is that an option was given to a Mr. Musser, and I won't say positively, but my impression is that his rights were transferred to the Payette Lumber & Manufacturing Company, and then a further agreement made with the Payette Lumber & Manufacturing Company and myself as trustee.

Q. Do you remember when the option was given to Mr. Musser? A. No, I couldn't tell you.

Q. Was that some time before the execution of the deed? A. Yes, sir.

Q. What would you say of the time of the giving of the Musser option relative to the time when Mr. Cobban executed the deed to yourself? Was it before or after?

A. I don't recollect that Mr. Cobban ever executed a deed to me.

Q. Mr. Cobban never conveyed any title to you, is that your recollection?

A. I couldn't say positively.

Q. What title, then, did you convey to the Payette Lumber & Manufacturing Company?

(Testimony of E. B. Weirick.)

A. I don't know whether the patents came to me or not.

Q. Is it your best recollection that this land was patented in your name?

A. Well, I can't recall.

Q. Now, you say, Mr. Weirick—

A. It is my—

Q. Go ahead. I will withdraw the question and give the witness an opportunity to finish his answer.

A. I believe it is my recollection now that Mr. Cobban, as a piece of land was approved, deeded it to me as trustee. [231—13]

Q. Do you remember whether or not the deeds from Mr. Cobban to yourself were executed by Mr. Cobban, acting as attorney in fact for Mollie Conklin and for Emily M. Reddy and Edwin A. Reddy, administratrix and administrator of the estate of Patrick Reddy, deceased? A. No, sir.

Q. You don't remember that? A. No, sir.

Q. You state that after the option from you to Mr. Musser, that some time thereafter the option or the right to the option was transferred to the Payette Lumber & Manufacturing Company, and you entered into further negotiations with them personally. Is that correct?

A. My recollection is, the rights of the original option was transferred to the Payette Lumber & Manufacturing Company.

Q. And thereafter you made a further agreement with them in regard to the sale?

A. Well, if I did, it was under the same terms as the original option.

(Testimony of E. B. Weirick.)

Q. Now, Mr. Weirick, did you furnish to the Payette Lumber & Manufacturing Company an abstract of title of the lands involved in this case at the time you delivered the deed, or before?

A. Not to my recollection.

Q. Now, Mr. Weirick, in examining the deed marked Defendants' Exhibit "A," I notice that the grantor is E. B. Weirick, trustee. A. Yes, sir.

Q. Now, at the time you executed that deed and delivered it to the defendant Payette Lumber & Manufacturing Company did you make any request, or did they make any request of you to know for whom you were acting as trustee? A. No, sir.

Q. Did they ask you any question as to the person for whom you were trustee? [232—14]

A. Not to my recollection.

Q. Did they make any inquiry from you as to the nature of the title that you held to the property in question? A. No, sir, not that I recall.

Q. If they had made such inquiry you would recall it, would you not, Mr. Weirick?

A. Well, not necessarily, it has been so long ago.

Q. Do you remember whether or not they questioned your authority as trustee to make the deed in question?

A. I don't think they ever raised the question to me.

Q. Now, did you deliver the deed personally to the Payette Lumber & Manufacturing Company?

A. No, sir.

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

R. M. COBBAN, E. B. WEIRICK, Individually and
Also as Trustee, and THE PAYETTE LUMBER
& MANUFACTURING COMPANY, a Corpora-
tion,

Appellants,

vs.

MOLLIE CONKLIN,

Appellee.

VOLUME II.
(Pages 257 to 552, Inclusive.)

Upon Appeal from the United States District Court for the
District of Idaho, Southern Division.

FILED

FEB 4 - 1913

No. 2236

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

R. M. COBBAN, E. B. WEIRICK, Individually and
Also as Trustee, and THE PAYETTE LUMBER
& MANUFACTURING COMPANY, a Corpora-
tion,

Appellants,

vs.

MOLLIE CONKLIN,

Appellee.

VOLUME II.

(Pages 257 to 552, Inclusive.)

Upon Appeal from the United States District Court for the
District of Idaho, Southern Division.

(Testimony of E. B. Weirick.)

Q. If the Payette Lumber & Manufacturing Company had inquired of you for whom you were acting as trustee, you would have informed them that Mr. Cobban was one of the parties in interest, would you not?

A. R. M. Cobban Realty Company was interested.

Q. And you would have informed them that Mr. Cobban was acting as agent for yourself and associates? A. Yes, sir.

Q. Did they make any inquiry whether or not, in purchasing this lieu scrip, Mr. Cobban was acting as your agent or as the agent for you and your associates?

A. I don't recall that they made any inquiry of that kind.

Q. You had no dealings with the complainant Mollie Conklin, did you, Mr. Weirick?

A. No, sir.

Q. You never have met her? A. No, sir.

Q. And know nothing with regard to what dealings Mr. Cobban had with her? A. No, sir. [233—15]

Q. If any? A. No, sir.

Q. I believe you stated that you had never examined any of the papers that were delivered to Mr. Cobban, in regard to the purchase of this property?

A. No, I never examined them with the idea of passing upon them at all. It was something I knew nothing at all about, and matters of that kind were left with Mr. Cobban, to prove the papers.

Mr. DAVIDSON.—I believe that is all. [234—16]

[Testimony of R. M. Cobban, for Defendants.]

R. M. COBBAN, called and sworn as a witness, testified as follows:

Direct Examination.

(By Mr. BLAKE.)

Q. You may state your name, place of residence and occupation.

A. R. M. Cobban; Missoula, Montana; occupation, real estate dealer.

Q. State whether or not you were acquainted with one John A. Benson in the year 1900, or prior to that time.

A. I had never heard of him at that time.

Q. In 1901?

A. I had business dealings with him.

Q. Had you met him personally at that time?

A. No, sir.

Q. Had you ever met the defendant Campbell?

A. Not until lately I never met him.

Q. Before 1901? A. No, sir.

Q. You may state, Mr. Cobban, the manner in which you acquired the rights to select the lieu lands described in the amended bill of complaint in this suit.

A. I had been acquiring scrip for a year or two prior to 1901.

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, and not pertaining—

Mr. BLAKE.—That isn't the question I am asking.

(Testimony of R. M. Cobban.)

Mr. DAVIDSON.—No, it is not responsive to the question at all.

Mr. BLAKE.—Just with reference to the rights involved here.

A. I purchased in the usual manner from—
[235—17]

Mr. DAVIDSON.—We now move to strike that out as a conclusion and not a fact.

Mr. BLAKE.—Let him answer the question and then you can make all the objections you want to.

A. From John A. Benson, lieu lands and the right to make selection of the lands that are involved in this action.

Mr. DAVIDSON.—We move to strike out all of the last answer of the witness, on the ground that the same is a conclusion of the witness, and does not contain any fact appertaining to any of the questions involved in this case, and as incompetent, irrelevant and immaterial.

Mr. BLAKE.—Go ahead.

WITNESS.—Do you wish me to describe the manner in which I purchased them?

Mr. BLAKE.—That is what I asked you.

A. Well, I learned of John A. Benson as a dealer in scrip, and I corresponded with the various dealers, and I learned that John A. Benson had so-called scrip for sale. I got his quotations on the lands, and ordered from time to time various amounts as I needed it, and among the lots that were furnished to me were the lots that are enumerated in this bill of complaint. The papers in each case were sent

(Testimony of R. M. Cobban.)

through one of the banks, either the First National Bank of Butte or one of the banks of Boise, and contained an abstract of title of the lands, together with the various papers, which was an application to select, and powers of attorney, and various other papers, and a draft for the amount of the purchase. In the cases of these lands I believe in every case it was \$4.00 an acre. The papers were delivered to me for examination by the bank, and after examination the draft was paid and the papers delivered to me as mine. [236—18]

Q. Were you familiar with the market value of scrip at that time? A. Yes, sir.

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, and not tending to prove any of the material issues in this case.

Mr. BLAKE.—Q. State whether or not you paid the market value for this scrip purchased and used in the selection of the lieu lands involved here.

Mr. DAVIDSON.—We object to it as incompetent, irrelevant and immaterial, and not tending to prove any of the material issues in this case.

Mr. BLAKE.—Q. Did you ever have any business relations or transactions with the complainant Mollie Conklin? A. I did not.

Q. Did you ever meet her or know her?

A. I did not. I never saw her.

Q. Among the papers which you had received for this so-called scrip were included, I believe you stated, a deed of relinquishment from the United States and an abstract of title.

(Testimony of R. M. Cobban.)

Mr. DAVIDSON.—He didn't state that there was a deed, judge. Pardon me for interrupting you.

Mr. BLAKE.—I will ask him.

Q. State fully what papers would be received with this so-called scrip, or rather, the right to select lieu lands.

A. An abstract of title, a deed from the parties holding title to the United States Government, showing the certificate of the recorder of the county in which the lands were situated that it had been properly recorded.

Mr. DAVIDSON.—We want to object to that as to the contents [237—19] of any deed, as the deed would be the best evidence, and he was going ahead to state what the deeds would show.

Mr. BLAKE.—We never undertook to establish title by those deeds, you understand.

Q. Go ahead.

A. An application to select lands, signed by the parties purporting to have deeded the lands to the Government, the same parties, the parties to the deed to the Government; a power of attorney to sell and convey the lands, and usually a power of attorney to do other acts necessary in the cases, and oftentimes there were several other papers,—not in all cases. There were new rules developed by the department all the time which called for some papers which were not of any particular consequence, but those were the principal papers.

Q. I believe you stated that you bought scrip or lieu land selection rights from other parties besides

(Testimony of R. M. Cobban.)

Mr. Benson? A. I did.

Q. And you were engaged in the business of buying lieu land rights, were you?

A. I purchased a very large amount of land at that time.

Q. Now, as to these powers of attorney that would be included in the papers received, would the name of the attorney in fact appear in those powers of attorney? A. No, sir.

Q. State whether or not that would be inserted after the papers were received.

A. It would, together with the description of the land to be selected, and the land office at which the selection would be made.

Q. State, from your experience, and having been engaged in that business at that time, as to what the custom was in regard [238—20] to the insertion of the name of the attorney in fact after these papers would be received.

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, as not pertinent to any issue in this case, and an improper way of showing title to real estate.

Mr. BLAKE.—We are not attempting to show any title to real estate.

A. It is the usual custom, and was the case in every selection, covering some two hundred selections which I handled at that time. And I will further state that not only myself, but I was familiar with the methods being pursued by all of the larger companies at that time acquiring lands in that vicinity.

(Testimony of R. M. Cobban.)

Mr. BLAKE.—Q. State when you first heard of Mollie Conklin, directly, or state whether or not you received any communication or any notice from her with reference to the base lands which had been relinquished by her and by the estate of Patrick Reddy, deceased.

A. The first notice I ever received from her, I believe, was in October or November, 1903.

Q. Have you that notice? A. I have.

Q. I will ask you whether you received that notice in due course of mail? A. I did.

Q. At about what time?

A. Some time in November, 1903, I should think.

Mr. BLAKE.—I will ask to have this marked as an exhibit.

The above paper was thereupon marked as Defendant P. L. Mfg. Co. & Cobban & Weirick Exhibit "B."

Mr. BLAKE.—We offer it in evidence. [239—21]

Mr. DAVIDSON.—We object to the introduction of the paper marked Defendants' Exhibit "B," on the ground that it is not properly identified.

Mr. BLAKE.—Q. I will ask you, Mr. Cobban, whether you at any time ever entered into any agreement with the defendants Benson or Campbell, or anyone else, whereby it was intended to acquire lands from Mollie Conklin, or the estate of Patrick Reddy, deceased, or to acquire the right from either of those parties to select lieu lands in lieu of the base lands which had been surrendered to the United States or relinquished to the United States by Mollie Conklin

(Testimony of R. M. Cobban.)

or the estate of Patrick Reddy, deceased.

Mr. DAVIDSON.—We object to that on the ground that it calls for an agreement which, under the statute of frauds, should be in writing, and that it would not be the best evidence.

A. I did not know Mr. Campbell or Mr. Metson, and the only dealings I ever had with John A. Benson was in the way of the purchase of scrip, as heretofore stated.

Mr. DAVIDSON.—We move to strike out the answer as not responsive to the question.

Mr. BLAKE.—Q. Were you acquainted, during the years 1900, 1901, or 1902, with any of the stockholders or officers or agents or representatives of the defendant Payette Lumber & Manufacturing Company? A. Yes, sir.

Q. Whom? A. During what time?

Q. The years 1900, 1901 and 1902.

A. No, sir, I was not, up until 1903. I will qualify that. I met some of the gentlemen connected with that company in the [240—22] latter part of 1902, but I believe there was no such company in existence at that time, but some of the gentlemen who afterwards composed that company.

Q. Which ones?

A. William Deary and William Musser, and I am not certain whether I met any others at that time or not.

Q. Did you have any dealings with them with regard to the acquisition of this lieu land scrip, of these lieu land rights which you have referred to?

(Testimony of R. M. Cobban.)

A. Not as the Payette Lumber & Manufacturing Company, but individually to William Musser an option was given for the purchase of all the timber lands which we had.

Q. I don't think you understand the question.

The last question was thereupon read by the stenographer.

A. I did not, in any way, shape or manner, except they got the lieu lands that I had.

Q. That is what I want.

A. We had simply—

Q. What I refer to, Mr. Cobban, as the right to select the lieu lands described in the bill of complaint.

A. The selections had been long since made, and generally approved by the general land office before ever I met any of these people.

Q. Did you have any information or knowledge other than what you have related with reference to the manner in which these lieu land rights were acquired from Mollie Conklin and the personal representatives of Patrick Reddy, deceased?

A. I knew nothing whatever except what was contained in the papers themselves that were sent to me, which were seemingly in regular order, and the communications of Mr. Benson to sell me lieu lands at the agreed price.

Mr. DAVIDSON.—We move to strike out the answer of the witness on the ground that he is attempting to state what is shown by [241—23] written instruments, and upon the ground that it is not the best evidence, in that it has not accounted for the

(Testimony of R. M. Cobban.)

nonproduction of the instruments themselves.

Mr. BLAKE.—I think that is all.

Cross-examination.

(By Mr. DAVIDSON.)

Q. Mr. Cobban, you say that in each individual case where you got selections of the lands involved here, that you received a power of attorney to sell the land? A. Yes, sir.

Q. Now, those powers of attorney were acknowledged, were they, at the time they were delivered to you? A. I believe they were.

Q. Mr. Cobban, I will call your attention to an instrument marked Complainant's Exhibit "C" for identification, purporting to be a power of attorney from Mollie Conklin to R. M. Cobban. You may examine that and state whether or not that is one of the powers of attorney which you received.

A. I would say it was.

Q. Now, Mr. Cobban, when the power of attorney, Complainant's Exhibit "C," was delivered to you, did it contain the name of R. M. Cobban, of Missoula, Missoula County, State of Montana?

A. It did not.

Q. Who filled in that part?

A. It was filled in by my office.

Q. And that was filled in by you or by your instructions after it was delivered to you by the bank?

A. It was.

Q. I will ask you who filled in the typewritten part, nineteenth, September, We, Mollie Conklin (a widow), Bakersfield, Kern, California, including the

(Testimony of R. M. Cobban.)

description of certain lands in California. [242—24]

A. That was all filled in when it came to me.

Q. That was all complete? A. Yes.

Q. Then, after you received the instrument though you inserted your name as the person constituted the attorney in fact, with your residence and address. Is that correct? A. I did, or had it done.

Q. Now, to save time, Mr. Cobban, you received a power of attorney for each of the several tracts of land involved herein, did you not, the same as the power of attorney shown you marked Complainant's Exhibit "C"?

A. Not necessarily for each subdivision, but for each selection.

Q. Now, Mr. Cobban, I have here the exhibits, Complainant's Exhibits "D" to "M," inclusive, each being a power of attorney in substance the same as the power of attorney shown you, Complainant's Exhibit "C," and I will ask you whether or not the name of R. M. Cobban, as attorney in fact, was inserted by you or by your instructions in each of those instruments after their delivery to you. Those were furnished by Judge Blake at the time of the other hearing. I don't want to take up each one individually.

Mr. BLAKE.—We will admit that.

Mr. DAVIDSON.—Very well. If counsel desires to admit that in the various powers of attorney—

WITNESS.—I would like to look through these a moment; it won't take but a moment.

(Testimony of R. M. Cobban.)

Mr. DAVIDSON.—Very well.

WITNESS.—As far as these are concerned, they—

Mr. DAVIDSON.—Then as far as the ones marked Complainant's Exhibit "D" to "L" inclusive, they were all in blank as far as the name of the attorney in fact were concerned at the time they [243—25] were delivered to you? A. Yes, sir.

Q. And the description of the land was in blank?

A. Not the description of the base land,—the description of the selected land.

Q. Now, Mr. Cobban, referring to the paper marked Complainant's Exhibit "M," being a certified copy of a power of attorney purporting to be a power of attorney from Mollie Conklin and Emily M. Reddy and Edwin A. Reddy, administratrix and administrator of the estate of Patrick Reddy, deceased, to R. M. Cobban, I will ask you whether or not your recollection is that you filled in the name of R. M. Cobban as the attorney in fact on the original of that after it was delivered.

A. I cannot say, because I believe there were some received in which the name was filled in.

Q. Did you receive any other powers of attorney from Mollie Conklin affecting any lands involved in this controversy other than those that have been shown you? A. I think so.

Q. Have you those in your possession?

A. No, I think they were forwarded to the Department in Washington, together with the abstracts.

Q. I mean powers of attorney to sell.

(Testimony of R. M. Cobban.)

A. I couldn't tell without seeing what descriptions are covered by those.

Q. Now, you say in each case there was delivered to you also an application,—just withdraw that question. Now, Mr. Cobban, at the time these various powers of attorney to sell the lands selected were delivered to you, you may state whether or not they showed upon their face that they had been acknowledged before a notary public previous to their delivery. A. They did.

Q. And you filled in the name of R. M. Cobban after the [244—26] instruments had been acknowledged by the parties executing them?

A. I did.

Q. Now, Mr. Cobban, I understand you to say that in each case there was delivered to you for each selection also an application to select lands in lieu of the base lands surrendered. A. Yes, sir.

Q. That purported to be signed by the persons who had relinquished the base lands to the Government? A. It was.

Q. And purported to be signed by Mollie Conklin and Emily M. Reddy and Edwin A. Reddy, representatives of the estate of Patrick Reddy, deceased?

A. I think there was a little difference in the way some of those were signed; but that is practically the fact.

Q. We are just trying to get at the general condition. Now, Mr. Cobban, at the time those applications to select were delivered to you, you may state whether or not they contained a description of the

(Testimony of R. M. Cobban.)

land to be selected in lieu of the base lands.

A. They did not.

Q. Who filled in those instruments, selecting the description of the lands to be selected?

A. I did, or had it done.

Q. Now, Mr. Cobban, after you filled those blanks with the descriptions of the lands to be selected, you would file those applications in the land office?

A. I would.

Q. And you filled in, in the powers of attorney to sell, the name of R. M. Cobban as attorney in fact before they were filed for record,—is that true?

A. Yes, sir. [244½—27]

Q. Now, Mr. Cobban, were you ever authorized in writing or otherwise by the complainant Mollie Conklin to insert your name in any power of attorney to sell any of the lands, the lieu lands, described in the bill of complaint herein, or ever authorized to insert your name or the name of any other person?

A. Only in a general way as her agent.

Q. I am not asking you generally; I am asking you specifically.

A. Not from Mollie Conklin personally.

Q. You were not authorized then by Mollie Conklin to insert your name in any of those instruments?

A. I was directed by the party from whom I purchased to do so.

Q. Did Mr. Benson ever show you any authority in writing, or other authority, to authorize you to insert your name in an instrument executed by Mol-

(Testimony of R. M. Cobban.)

lie Conklin involving lands involved herein?

A. He did not.

Q. Did Mollie Conklin ever authorize you, or either of the Reddys authorize you to insert the description of any lands to be selected in the application to select lieu lands?

A. I considered it an authorization.

Q. Did they ever directly authorize you?

A. Only in a general way.

Q. Do you mean by that that you had any communications or other word from them authorizing such insertion?

A. I did not, other than the usual way, and the fact that the papers came for a consideration, and there could be no—

Q. Well, you assumed from the fact that the papers were delivered to you for a consideration that you had a right to make such insertions as you might see fit?

A. The papers could be construed in no other way.

Q. Did you assume from the fact that the papers were delivered to you incomplete that you had a right to insert [245—28] in them such things as you thought necessary? A. I did.

Q. And you acted upon that assumption?

A. I did.

Q. Now, at the time you were purchasing these rights were you acting as agent for yourself and Mr. Weirick and others, Mr. Cobban?

A. I was for the R. M. Cobban Realty Company and others.

(Testimony of R. M. Cobban.)

Q. And you was a partner in that company?

A. I was a stockholder in the corporation.

Q. You filed an answer in this cause, did you not, Mr. Cobban? A. I think so.

Q. And do you remember whether or not you verified that answer? A. I presume I did.

Mr. DAVIDSON.—The clerk's office is closed, Mr. Blake, so I will show him a copy that was served upon me. I suppose there will be no objection.

Q. I call your attention, Mr. Cobban, to the first subdivision of the affirmative defense of the answer of R. M. Cobban and E. B. Weirick, individually and as trustee, appearing on page 18 of the separate answer of the defendants filed herein, wherein it is alleged that on or about February 19th you undertook to purchase the lieu lands for the investment purposes of yourself, Mr. Weirick and other associates, and ask you whether or not that answer was verified by you, and whether that was a true statement.

A. In a way it was, but it should have stated the R. M. Cobban Realty Company instead of individually, although I was benefited thereby. [246—29]

Q. Mr. Cobban, in all of your transactions involving the purchase of what you term this lieu scrip, and the selection of the lieu lands involved in this case, you were acting as agent for Mr. E. B. Weirick, trustee and individually, and your associates named by him? A. Yes, sir.

Q. And you were one of the parties beneficially interested in that contract?

(Testimony of R. M. Cobban.)

A. I was to that extent.

Q. Now, Mr. Cobban, Mr. Weirick and your associates, of which you was a member, furnished the money that was paid for the purchase of this scrip, as you call it? A. Yes, sir.

Q. And do I understand that you afterwards deeded any of this property to Mr. Weirick?

A. I did.

Q. At the time you deeded it, did he pay you any consideration for the execution of that deed, further than the amount that had been paid at the time of the purchase?

A. None whatever; I was simply a trustee for him.

Q. You was simply a trustee for him?

A. Yes, sir.

Q. Now, this agreement to locate the land for Mr. Weirick and yourself and others was made before you purchased any scrip or the right to select any of the lieu lands involved in this case? A. It was.

Q. And this deed made afterwards was made pursuant to an agreement between yourself, Mr. Weirick and the other gentlemen for the acquisition of the property? A. Yes, sir. [247—30]

Q. Now, you say you became acquainted with Mr. Musser along about the year 1902? A. Yes, sir.

Q. At that time did you enter into any negotiations with Mr. Musser for the sale to him or to any corporation to be organized by him of the lands involved in this case?

A. Those lands and others.

(Testimony of R. M. Cobban.)

Q. When did you give him the option to which you have testified?

A. Either in December, 1902, or January, 1903; I am not certain, about that time.

Q. No part of the purchase price was paid at that time, was it, Mr. Cobban?

A. Yes, sir; simply a dollar.

Q. Just simply one dollar, as a nominal consideration?

A. It was an option, and the dollar given as a part of the purchase price.

Q. And the only part of the purchase price paid until the time of the execution and delivery of the deed marked Defendant's Exhibit "A"?

A. I think there was a payment made prior to that time; I think there was a ten thousand dollar payment made prior to that time.

Q. Were you acquainted with one Mr. Henry Turkish, I believe? A. Yes, sir.

Q. Was he interested in the negotiations made by you and Mr. Musser?

A. I am not certain whether I knew him at that time, or shortly afterwards.

Q. You did afterwards become acquainted with him? A. Yes, sir. [248—31]

Q. You became acquainted also about the same time with one Mr. William Deary, I believe you stated? A. Yes, sir.

Q. And was he interested in the negotiations which took place between yourself and Mr. Musser?

A. He was.

(Testimony of R. M. Cobban.)

Q. These gentlemen, Mr. William Deary and Mr. Musser and Mr. Turrish afterwards became the promoting stockholders of the Payette Lumber & Manufacturing Company, did they not?

A. I believe so, yes, sir.

Q. Now, Mr. Cobban, at the time the land was conveyed, at the time of the delivery of the deed marked Defendants' Exhibit "A," do you know what instruments, if any, was furnished to them, other than the deed itself?

A. An abstract of title in each instance.

Q. An abstract of title? A. Yes, sir.

Q. Now, then, Mr. Cobban, did you conduct the negotiations for the sale of this land up to the time of the delivery of the deed, with Mr. Musser and their assigns, the Payette Lumber & Manufacturing Company?

A. I did, in conjunction with Mr. Weirick. I did a good deal of the negotiating, and then my negotiations were confirmed by Mr. Weirick and the other members of the syndicate.

Q. Now, Mr. Cobban, did the Payette Lumber & Manufacturing Company, or any of their agents, at the time, or before the closing of the sale of the property at the time stated in the deed marked Defendants' Exhibit "A," make any inquiry of you as to who E. B. Weirick, trustee, was trustee for,—the person appearing as grantor in the deed marked Defendants' Exhibit "A"? [249—32]

A. They required an abstract of the title, to show all instruments that affected the title.

(Testimony of R. M. Cobban.)

Q. I will repeat the question. Did the Payette Lumber & Manufacturing Company, or any of their agents or officers, in any negotiations with you involving the sale of the lands in controversy herein, ask you, or make inquiry from you as to who E. B. Weirick, trustee, was trustee for, affecting the title of this property?

A. I think so; I think they knew who the members of the syndicate were, and the manner in which it had been conducted, the manner of our acquiring the timber.

Q. Did you inform the Payette Lumber & Manufacturing Company or any of their officers that you had acquired the right to select this land for the use and benefit of Mr. Weirick and yourself and other parties, and that you had conveyed it to Mr. Weirick for the purpose of carrying out an agreement under which you had secured these rights?

A. I am not certain whether I told them that or not.

Q. Did you inform Mr. Musser, at the time you gave him the option, that you and Mr. Weirick had acquired this property by purchase of the selections, and that it had been conveyed to Mr. Weirick as trustee for yourself and your associates?

A. Well, in a general way, yes; the manner of acquiring the lands was gone into.

Q. Now, who represented the Payette Lumber & Manufacturing Company in the final consummation of the sale of the property involved in this case?

A. William Musser, I think, and Mr. Deary.

(Testimony of R. M. Cobban.)

Q. Now, your best recollection has it, Mr. Cobban, that before the delivery of the deed marked Defendants' Exhibit "A," you fully informed Mr. Musser and Mr. Deary as to the exact manner in which you had acquired the rights to select the lieu [250—33] land and had selected the lieu land involved in this case?

A. I don't know that I went explicitly into each case, the general manner that they were taken under lieu selections, these lands in controversy being only a small portion of the lands conveyed to them. They required an abstract which set forth the essential,—everything that was necessary.

Q. Did that abstract of title show the contract under and by which Mr. Weirick held these lands as trustee? A. No, I think not.

Q. Did you inform Mr. Musser and Mr. Deary, as officers of the Payette Lumber & Manufacturing Company, of the agreement between yourself and Mr. Weirick? A. I do not know.

Q. Do you remember whether or not they made any inquiry from you as to who were the persons interested with Mr. Weirick in this property and for whom he held as trustee? A. I couldn't say.

Q. If they had made such inquiry would you have told them the facts as you have told them here?

A. Most assuredly.

Redirect Examination.

(By Mr. BLAKE.)

Q. I will ask you, Mr. Cobban, a matter which I overlooked on direct examination, and that is,

(Testimony of R. M. Cobban.)

whether or not you ever received any other powers of attorney from Mr. Benson, signed by Mollie Conklin, other than those which have been introduced in evidence here as defendants' exhibits.

A. Yes, sir.

Q. You may go ahead and state in what connection, and whether it was a power of attorney that related to any steps to be taken in making the lieu selections referred to in the bill of complaint herein.
[251—34]

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, and not the best evidence, as the instruments speak for themselves.

Mr. BLAKE.—I am trying to find out first whether he received any.

WITNESS.—To the best of my recollection, I did receive others.

Q. You may state in what connection you received those.

Mr. DAVIDSON.—We object to that as not the best evidence; the instruments would speak for themselves.

A. I had prepared and printed a printed form of power of attorney, particularly authorizing me in all of these lieu land selections to post notices that was not specifically contained in some of the other powers of attorney, only in a general way, and these were printed forms, with my name and address printed, and I received a large number of those powers of attorney, and it is my recollection and belief that I received a number of them from Mollie

(Testimony of R. M. Cobban.)

Conklin and the Reddys, through John A. Benson.

Mr. DAVIDSON.—We move to strike out all that part of the answer of the witness last above given relating to any powers of attorney purporting to have been received from Mollie Conklin, on the ground that the evidence is not the best evidence, the instruments speaking for themselves, and for the further reason that it is not shown that the instruments were executed by the plaintiff Mollie Conklin or by the Reddys, or either of them, to the witness.

Mr. BLAKE.—Q. What became of those instruments, if you know, Mr. Cobban?

A. They were forwarded to Washington, together with the applications.

Q. To what particular place in Washington?

A. To the Commissioner of the general land office, through the local land office. [252—35]

Q. State whether or not they were required to be filed in the local land office when the selections were made, or during the course of the making of the lieu selections, as a part of the record.

A. They were; they were called for by the Department.

Q. How long after the receipt of these powers of attorney which have been introduced in evidence as complainant's exhibits did you receive the other powers of attorney referred to?

Mr. DAVIDSON.—We object to it on the ground that it is not shown that the witness ever received any power of attorney from the complainant Mollie Conklin.

(Testimony of R. M. Cobban.)

A. They followed shortly after the purchase of the scrip.

Mr. BLAKE.—Q. Shortly after?

A. Shortly after.

Q. From whom did you receive those powers of attorney, that is, by whom were they mailed to you, if you know? A. John A. Benson.

Q. You received them in the regular course of mail, did you? A. Yes, sir.

Mr. DAVIDSON.—We move to strike out the testimony of the witness relating to any subsequent powers of attorney, on the ground that it is not shown that they were ever delivered to him by her or executed by her, and it is not the best evidence. [253—36]

[Testimony of E. M. Hoover, for Defendants.]

E. M. HOOVER, called and sworn as a witness, testified as follows:

Direct Examination.

(By Mr. BLAKE.)

Q. You may state your full name and place of residence and occupation.

A. E. M. Hoover; Boise, Idaho; General Manager of the Payette Lumber & Manufacturing Company.

Q. I will ask you whether or not you are familiar with the lands described in the amended bill of complaint herein, referred to as lieu lands, which lands are located in Boise County, Idaho. A. I am.

Q. I will ask you, Mr. Hoover, whether or not you were familiar with the market value of those lands at the time of the, —on the 19th of May, 1903.

(Testimony of E. M. Hoover.)

A. I was.

Q. You may state clearly what was the market value of lands of that character at that time.

Mr. DAVIDSON.—We object to that on the ground that the witness has not shown himself qualified to testify as to the value of the lands at that time.

A. Lots of the same character in the same district could be had under scrip filings for the market value of scrip at that time, somewhere about five dollars. It could be purchased from individuals at between five and eight dollars an acre.

Q. From your knowledge, then, as to the value of those lands and lands of similar character at that time, what would you say as to eight dollars and fifty-five cents an acre being a fair price for lands of that character?

Mr. DAVIDSON.—We object, on the ground that the witness has not shown that he is qualified to testify. [254—37]

A. I should say the price was a little in excess of the market value at that time.

Mr. BLAKE.—That is all.

Cross-examination.

(By Mr. DAVIDSON.)

Q. Mr. Hoover, were you acquainted with those lands involved in this case at the time of the delivery of the deed marked Defendants' Exhibit "A"?

A. Not those particular lands.

Q. You were not acquainted with them?

A. Generally only in the district.

(Testimony of E. M. Hoover.)

Q. You have been acquainted with the lands since that time? A. I have been on the lands since.

Q. During most of the time since that time you have been the general manager of the Payette Lumber & Manufacturing Company?

A. Most of the time, yes.

Q. You may state whether or not the lands involved in this case are now in the same condition that they were in at the time of the execution of the deed marked Defendants' Exhibit "A."

A. Practically the same; no timber has been cut.

Q. They are still in a wild, natural state?

A. Yes, sir.

Q. Uncultivated lands?

A. Not cultivated in any way.

Redirect Examination.

(By Mr. BLAKE.)

Q. The general manager of the Payette Lumber & Manufacturing Company, when did you first receive any information with reference to the fact that the complainant Mollie Conklin was claiming that she had been defrauded out of certain base lands upon which the right to select the lieu lands described in the bill of complaint [255—38] was based, and that the parties defrauding her were the defendants Benson, Campbell and others.

A. The first notice we had was on being served with the original bill of complaint, to which we were made, that is, the Payette Lumber & Manufacturing Company were made parties. I don't recall the date.

(Testimony of E. M. Hoover.)

Q. You mean the original bill of complaint filed by the United States in this suit? A. I do.

Q. What you mean, Mr. Hoover, there are two bills of complaint in this suit, one filed by the United States and the other by Mollie Conklin, and the time you refer to was the time when the first of these bills was served upon you, as general manager of the Payette Lumber & Manufacturing Company?

A. The notice was served upon me, and that was the first notice that I or any of our company had that there was any objection to the title.

Recross-examination.

(By Mr. DAVIDSON.)

Q. Mr. William Musser is president of the Payette Lumber & Manufacturing Company? A. Yes, sir.

Q. And has been since the time of its incorporation? A. Yes, sir.

Q. Mr. Deary is an officer and stockholder?

A. He is a stockholder.

Q. He is a stockholder? A. Yes, sir.

Q. Was he ever an officer?

A. Not to my knowledge.

Q. Mr. Henry Turrish was an officer?

A. He is now. [256—39]

Q. And has been since the incorporation of the company? A. I think so.

Q. And Mr. Musser and Mr. Deary and Mr. Turrish have been stockholders at all times since the incorporation of the company? A. They have.

Q. Were you connected with the company at the time the deed, Defendants' Exhibit "A," was de-

(Testimony of E. M. Hoover.)

livered? A. Not as an officer.

Q. Do you know who had charge of the negotiations for the purchase of this land?

A. Mr. William Musser, as president of the company, acting with others of the board of directors, whom I can't mention; I don't know. He was one of them.

Q. Mr. Musser was president at that time?

A. Yes, sir.

Mr. DAVIDSON.—That is all. [257—40]

Examiner's Certificate to Testimony, etc.

State of Idaho,

County of Ada,—ss.

I, Robert M. McCracken, Special Examiner appointed by the Court to take evidence in the City of Boise in the above-entitled action, do hereby certify that the witnesses named in the foregoing transcript (consisting of pages 1 to 40 inclusive), attended before me, and that each of such witnesses was duly sworn by me to testify to the truth, the whole truth, and nothing but the truth, and in response to oral interrogatories testified as more fully appears from the foregoing transcript, which transcript, together with the exhibits therein referred to, contains all of the evidence so taken before me on behalf of the defendants, and all of the stipulations made, and objections and other proceedings had and taken before me on the trial of said cause, while taking such evidence.

Dated this 29th day of June, 1910.

R. M. McCRACKEN,
Special Examiner. [258—41]

[Endorsed]: Filed June 29, 1910. A. L. Richardson, Clerk. [259]

[Commission to Notary Public Holton to Take Certain Testimony.]

In the Circuit Court of the United States for the District of Idaho.

The President of the United States of America, to Charles R. Holton, Notary Public, San Francisco, Cal., Greeting:

KNOW YE, That we in confidence of your prudence and fidelity, have appointed you a COMMISSIONER, and by these presents do give you full power and authority diligently to examine Dr. John Snook, R. B. Swayne, Mrs. S. J. Coleman, H. M. Wright and J. F. Lucey, residing at Berkeley, Cal., and in San Francisco, Cal., each, upon his corporal oath, or affirmation, before you to be taken orally, commencing March 21, 1910, at 10 o'clock A. M., as witnesses on the part of the complainant in a certain cause now pending undetermined in the Circuit Court of the United States of America, for the District of Idaho, wherein Mollie Conklin et al. are plaintiffs and R. M. Cobban et al. are defendants; and we do hereby require you, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal, and direct it to the Clerk of the above-entitled Court, at Boise City, in the District of Idaho, as soon as may be after the execution of this commission; and that you return the same, when executed as above directed, with the

title of the cause endorsed on the envelope of the commission.

WITNESS, The Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, at Boise City, in said District, this the 11th day of March, A. D. 1910.

[Seal]

A. L. RICHARDSON,
Clerk. [260]

*In the Circuit Court of the United States for the
District of Idaho, Ninth Judicial Circuit, Cen-
tral Division.*

IN EQUITY—CONSOLIDATED No. 60.

UNITED STATES OF AMERICA and MOLLIE
CONKLIN,

Complainants,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually and
also as Trustee, PAYETTE LUMBER &
MANUFACTURING COMPANY, a Corpora-
tion, JOHN DOE, MARY DOE, RICHARD
ROE and THOMAS ROE,

Defendants.

Depositions of H. M. Wright, R. B. Swayne and Mrs.
Sybil J. Coleman.

APPEARANCES.

NORMAN E. CONKLIN, of San Francisco, for Com-
plainants;

J. C. CAMPBELL, of San Francisco, *in Propria
Persona* and as Attorney for John A. Benson:

CHARLES S. CUSHING, of San Francisco, for Defendants R. M. Cobban, E. B. Weirick and the Payette Lumber & Manufacturing Co., and WM. H. METSON, of San Francisco, as Attorney for Mrs. Sybil J. Coleman. [261]

BE IT REMEMBERED: That, pursuant to the Commission hereunto annexed, and, on Monday, the 21st day of March, 1910, at the hour of 10 o'clock A. M. of said day, at my office in room No. 519 on the Fifth Floor of the Metropolis Bank Building, at the southeast corner of Market and New Montgomery Streets, in the City and County of San Francisco, State of California, before me, CHARLES R. HOLTMAN, a Commissioner duly appointed by the Circuit Court of the United States for the District of Idaho, Ninth Judicial Circuit, Central Division, and a Notary Public in and for said City and County of San Francisco, personally appeared H. M. WRIGHT, R. B. SWAYNE and Mrs. SYBIL J. COLEMAN, witnesses produced on behalf of the complainants in the above-entitled action, now pending in said court, who, being each first by me duly sworn, were then and there examined and interrogated by Norman E. Conklin, Esq., of counsel for said complainants, and by J. C. Campbell, appearing *in propria persona* and as counsel for John A. Benson, and by Charles S. Cushing, Esq., of counsel for defendants R. M. Cobban, E. B. Weirick and the Payette Lumber and Manufacturing Company, whereupon said witnesses testified as hereinafter set forth: [262]

[Deposition of H. M. Wright, for Complainants.]

H. M. WRIGHT, a witness called on behalf of the complainants, being first duly sworn, testified as follows:

Mr. CAMPBELL.—I have an objection to register, for the purpose of making the record straight. We object to the taking of the deposition of this witness, or of any witness under this notice, on the ground that the notice is insufficient; that it does not comply with the Revised Statutes of the United States, or the statute concerning which it is attempted to take the depositions under; and an additional objection that the bill of complaint in this case does not state any facts sufficient to entitle the complainant to the equitable relief therein prayed for, or to any equitable relief whatsoever. That objection is made on behalf of J. C. Campbell and John A. Benson.

Mr. CUSHING.—The defendants, Cobban, Weirick and the Payette Lumber & Manufacturing Company, make the same objection.

Mr. CONKLIN.—Q. What is your name?

A. H. M. Wright.

Q. Are you acquainted with Mr. J. C. Campbell?

A. I am.

Q. Are you acquainted with John A. Benson?

A. Well, I called on him once, but I cannot say that I am acquainted with him.

Q. Were you acquainted with Mrs. Carolyn Reddy in her lifetime? A. Yes.

Q. Were you her attorney? A. Yes.

Q. In the year 1902, on September 5th, or about

(Deposition of H. M. Wright.)

that date, did you have a conversation with Mr. Benson in regard to lands, commonly known as "Monache Lands"?

A. I had one conversation with Mr. Benson—I am not certain of the date—about that time. [263]

Q. Who was present at that conversation?

A. No one besides myself and Mr. Benson.

Q. Will you please state the substance of that conversation?

Mr. CAMPBELL.—I object to that question on the ground that it is incompetent, irrelevant and immaterial, it being shown by the bill that the title to the land has passed out of John A. Benson,—the "Monache Lands," and that any statement made to Mr. Benson will not, in any way, bind any of the defendants in this case, nor affect the subject matter of this suit.

Mr. CUSHING.—We can stipulate that only objections as to the form of the question need be made now; all other objections as to competency may be made at the hearing.

A. I haven't any clear recollection as to it, Mr. Conklin.

Q. Don't you remember any of the conversation that occurred between you and Mr. Benson at that time?

A. I remember the purpose of my visit, and the substance of our talk was with respect to the situation of the lands belonging to the estate of Patrick Reddy, known as the "Monache Lands," and my purpose was to try and find out the status of those

(Deposition of H. M. Wright.)

lands, and the situation of the estate with respect to them.

Q. What did Mr. Benson state with reference to the status of those lands?

Mr. CUSHING.—I object to the question on the ground that it is incompetent, calls for hearsay, and is not binding on any of these defendants.

Mr. CAMPBELL.—I make the same objections, and the further objection that the record is the best evidence as to the status of the lands.

A. When I spoke of the status of the lands, I referred to the condition of the case in the land office, and I think also the question came up as to how Benson was handling the lands. Now, as to the condition of the case in the land office at that time, [264] I am sorry to say that my memory doesn't serve me.

Q. How did Mr. Benson say that he was handling the lands?

Mr. CAMPBELL.—I make the same objection to that question on all the grounds heretofore made.

Mr. CUSHING.—I make the same objection.

A. It has been so long since I have thought of this case that I find myself very much at loss. The best I can do, Mr. Conklin, is to say that he either claimed that he had a contract of sale on them, or that he had bought them. But I can't remember which.

Q. Did he state to you at that time that he had any powers of attorney from the parties in interest, or any of them, in regard to these lands?

Mr. CUSHING.—We make the same objections

(Deposition of H. M. Wright.)

to this question, and also on the ground that it is leading.

Mr. CAMPBELL.—Same objection. Let it be understood that we join in these objections.

A. I believe he stated—

Q. Did what?

A. (Continuing.) Stated that he had powers of attorney from the owners.

Q. Now, Mr. Wright, at this time, or about this time, did you have any conversation with Mr. J. C. Campbell in regard to this property? A. Yes.

Q. Was anyone present at the time this conversation took place? A. I think not.

Q. Where did it take place?

A. I called on Mr. Campbell at his office in the Crocker Building, in this city.

Q. What did he state to you in regard to this property?

Mr. CUSHING.—We make the same objections that we have already interposed in regard to Benson.

Mr. CAMPBELL.—There is no allegation in the bill that would bind any person by any statement made by Campbell. [265]

A. To the best of my recollection, Mr. Campbell said that Benson had had contracts to dispose of these lands; that he had not paid for them; and that the estate was going to sell the lands at probate sale—going to try and wind up the whole business as quickly as he could.

Q. Did he at that time say that he had been so long making these payments that he wasn't going to have

(Deposition of H. M. Wright.)

anything more to do with them?

Mr. CUSHING.—I object to the question on the ground that it is leading.

A. I haven't any independent recollection on that matter; but, if you find that I have so stated in my letter—

Q. Did he also say at that time that he, Mr. Campbell, was going to get immediately an order for the sale of the lands in this suit, or rather the "Monache Lands"?

Mr. CUSHING.—Subject to the same objection.

A. Yes, to the best of my present recollection.

Q. Did Mr. Campbell state to you at that time that there were any powers of attorney in existence regarding these lands?

Mr. CUSHING.—I make the same objection.

A. I have no present recollection about it, Mr. Conklin. You are asking me questions from the letter that I wrote them.

Q. Had your client, Mrs. Carolyn Reddy, an interest in this property? A. Yes.

Q. Had she, to your knowledge, given a power of attorney to anyone to handle these lands, or her interest in these lands, at that time?

A. To the best of my knowledge, she had not.

Q. From your conversation with either of these parties, did you gain any information that any powers of attorney were in existence? [266]

Mr. CUSHING.—I object to the question as being indefinite, and as not showing which of the parties are referred to.

(Deposition of H. M. Wright.)

Mr. CONKLIN.—Both of them are referred to.

A. I think so.

Q. They stated that there were?

A. I think I have already testified that I understood from Mr. Benson that there were powers of attorney in existence.

Q. Your recollection being so poor, I am going to ask you if this is your signature to this letter, dated September 3, 1902? (Mr. Conklin shows letter to witness.) A. Yes, sir.

Q. (Continuing.) Addressed to N. E. Conklin, Esq., Bakersfield, Cal.? A. Yes, sir.

Q. And also, is that letter, dated, September 17, 1902, addressed to N. E. Conklin? A. Yes, sir.

Q. I will ask you to state whether or not the contents of them are true.

Mr. CUSHING.—I object to the question on the ground that it is incompetent, irrelevant and immaterial, and not binding on the defendants.

A. The contents of them are true.

Q. I will ask you to look the letter over, and to state whether or not it isn't a fact that they did not inform you that any powers of attorney were in existence?

Mr. CUSHING.—I object to the question on the ground that no proper foundation has been laid for the question, and that the evidence is not binding on the defendants.

Mr. CAMPBELL.—It isn't the proper method of refreshing a man's recollection. And I make the further objection that he is attempting to impeach his own witness by a writing that is not properly

(Deposition of H. M. Wright.)

identified. [267]

A. In my letter of September 17, 1902, I wrote to Mr. Conklin as follows: "Nothing further has been done by Mr. Campbell with respect to the sale of the interest of the Reddy estate in lieu lands, or, to be more accurate, to authorize powers of attorney to be given by the administratrix to make selections and sales, or to confirm such as may have already been given. I have been able to get no satisfaction, as yet, from either Campbell or Benson on the question whether or not Benson has a power of attorney from Mrs. Reddy." I judge from that letter that the fact was that Benson did not say anything to me in regard to the power of attorney. I haven't at present any clear recollection about the matter.

Q. Did you have any knowledge at that time in regard to any power of attorney being in existence in regard to these lands?

Mr. CUSHING.—I object to the question on the ground that it is incompetent, irrelevant and immaterial, and not binding on these defendants.

A. I don't think so.

Q. What are your relations with Mr. J. C. Campbell, friendly or unfriendly? A. Friendly.

Q. And with Mr. Metson? A. Friendly.

Q. Were you, at one time, associated with them in the practice of law, or in their office?

A. I was not.

Q. Were you associated with them in Alaska, or with Mr. Metson?

A. Yes, Mr. Metson was chief counsel for a com-

(Deposition of H. M. Wright.)

pany for which I was also attorney.

Q. What was the name of the firm in Alaska with which you were practicing?

A. I think it was Reddy, Campbell & Metson, which was afterwards changed to Campbell & Metson. I did not practice with them, [268] but independently.

Q. That is, after you returned, or while you were up there? A. I can't remember, Mr. Conklin.

Q. You remember, Mr. Wright, that, at one time, two of your clients, Mr. M. H. Reddy and Johnny Reddy, were interested in the Reddy estate, do you not? A. Yes.

Q. They were your clients, were they not?

A. Michael George Reddy was; John was not.

Q. What became of the interest of Michael George, if you know?

Mr. CAMPBELL.—I object to that question on the ground that it is incompetent, irrelevant and immaterial. The record will be the best evidence.

Mr. CONKLIN.—I will submit that the records do not show the true status of the interest. That is the purpose of this testimony.

Mr. CAMPBELL.—The answer to that is that this is not an action in equity to set aside a record. You cannot contradict collaterally a proceeding or judgment, or anything of that kind collaterally.

A. The interest of Michael George Reddy, with that of all the other heirs at law of Carolyn S. Reddy, deceased, was sold by them to a Scandinavian banker of Seattle. I think his name was Chilberg.

(Deposition of H. M. Wright.)

Mr. CUSHING.—I object to that on the ground that the witness was not asked about John Reddy.

Q. And regarding John Reddy's interest?

Mr. CUSHING.—I make the same objection to that question that was interposed by Mr. Campbell to the preceding question.

A. John Reddy's interest was transferred by him to W. H. Metson, who either transferred it to the other Reddy children, or paid over the proceeds of it to them—I don't remember which. My recollection is that he deeded it in turn to Michael George Reddy and Catherine Maher, born Reddy. [269]

Q. Who continued the negotiations for the sale of this interest of Michael George Reddy, if you know?

A. I did.

Q. With whom?

A. Mr. Metson. I asked him if he could find a purchaser.

Q. Is it not a fact that, prior to this time, you had drafted a deed conveying the interests of Michael George Reddy to his wife, and which Michael George Reddy had executed?

Mr. CAMPBELL.—Subject to the same objection heretofore made. We cannot try any of the questions that might exist between the heirs, in this proceeding. It is an attempt to attack collaterally certain records which are not the subject matter of this action, this being a suit by the United States to set aside a United States patent to certain lands in the State of Idaho.

A. I remember drafting such a deed, and, to the

(Deposition of H. M. Wright.)

best of my recollection, he signed it in my office.

Mr. CONKLIN.—That is all.

Cross-examination.

Mr. CAMPBELL.—Q. Did he ever deliver it to his wife, to your knowledge?

A. I think she was present at the time. I don't know whether it was delivered or not. I presume—I would say it was delivered if I drafted it.

Q. In this conversation which you had with Mr. Benson, you were talking about the Reddy interest in the "Monache Lands," were you not?

A. Yes, sir.

Q. That is the only thing which you had any interest in? A. Yes, sir.

Q. In the conversation which you had with me, Mr. Campbell,—that was the September conversation? [270]

A. To the best of my recollection.

Q. Nothing was said about my interest in the Carolyn Reddy estate in any conversation with Mr. Campbell?

A. Well, probably the question of Mrs. Carolyn Reddy's interest was discussed. I don't remember what was said about it.

Q. You don't remember anything about that, do you? A. No.

Q. At any rate, I, Mr. Campbell, didn't pretend to be representing any interest except the Reddy estate?

A. I don't remember definitely, Mr. Campbell.

Q. In representing the interest of Carolyn Reddy,

(Deposition of H. M. Wright.)

after Mr. Reddy's death, you became familiar with the record in the Reddy estate, did you not?

A. Yes.

Q. Do you know whether or not Mrs. Emily M. Reddy, as administratrix of the estate of Patrick Reddy, had filed a petition in the probate court of the City and County of San Francisco, Department No. 9, asking permission of the Court to allow her to transfer these "Monache Lands," prior to any conversation which you had with Mr. Benson?

A. I have no recollection.

Q. Do you know whether or not a petition was filed in the probate court, Department No. 9 of the Superior Court of San Francisco, after this conversation, asking for an order of the Court for a sale of the Reddy interest in the "Monache Lands"?

A. I remember that there was such a petition for sale filed at some time, but whether prior or after our conversation, or when, I cannot now remember, Mr. Campbell.

Q. Were you present in court when that petition came up? A. I don't remember.

Q. Do you not remember that, when that petition came up, Mr. N. E. Conklin, or this Mr. Conklin who is here, appeared before Judge Coffey, and objected to the petition being granted? [271]

A. I remember that Mr. Conklin appeared at one of the proceedings, and I think that was the occasion.

Q. Do you remember the ground of his objection?

A. No.

Q. Did he not state that the lands had been con-

(Deposition of H. M. Wright.)

veyed by the Reddy estate to the Government of the United States, and that the Court had no jurisdiction to make an order of sale? A. I don't remember.

Q. You remember that the Court did refuse an order, do you not?

Mr. CONKLIN.—I object to that question on the ground that it is leading.

A. I am sorry to say that I cannot remember.

Redirect Examination.

Mr. CONKLIN.—Q. I will read over your letter of September 5, 1902, addressed to N. E. Conklin, Esq.: "I gather from what —." (Continuing.) I withdraw the question.

Mr. CONKLIN.—That is all.

Mr. CUSHING.—No questions.

H. M. WRIGHT. [272]

WITNESS.—On reading the transcription of the testimony in the foregoing deposition, I desire to make certain changes other than those which appear therein as made with the pen and initialed by me. Upon examining my files and copies of papers in the matter of the estate of Carolyn S. Reddy, deceased, and my correspondence with Michael George Reddy, I wish to change my answer found at page 8, to the question, "What became of the interest of Michael George, if you know," so that the answer will read as follows:

A. By deed dated March 2d, 1907, Michael George Reddy, Katherine Mahar, formerly Katherine Reddy, and B. B. Jackson, heirs at law of Carolyn S. Reddy, deceased, conveyed all the interest of the

(Deposition of H. M. Wright.)

estate of Carolyn S. Reddy and of themselves as her heirs in the estate of Patrick Reddy, deceased, to J. E. Chilberg of Seattle, Wash., subject to administration. The purchase price was paid and the transaction concluded on March 12th, 1907. Mrs. Michael George Reddy joined in the execution of said deed.

WITNESS.—The answer to the question on the same page, “And regarding John Reddy’s interest,” I desire also to change so as to read as follows:

A. John Reddy, by deed dated June 21st, 1905, sold and assigned to W. H. Metson all his interest in the estate of Carolyn S. Reddy, deceased, and in the estate of Patrick Reddy, deceased, and thereafter, by deed dated February 12th, 1907, W. H. Metson transferred and assigned to Michael George Reddy the said interests in said estate so transferred to him by John Reddy as a gift to Michael George Reddy and without further consideration.

H. M. WRIGHT. [273]

[Deposition of R. B. Swayne, for Complainants.]

R. B. SWAYNE, a witness called on behalf of the complainants, being first duly sworn, testified as follows:

Mr. CAMPBELL.—I have an objection to register, for the purpose of making the record straight. We object to the taking of the deposition of this witness, on the ground that the notice is insufficient, that it does not comply with the Revised Statutes of the United States, or the statute concerning which it is attempted to take the depositions under; and an addi-

(Deposition of R. B. Swayne.)

tional objection that the bill of complaint does not state any facts sufficient to entitle the complainant to the equitable relief therein prayed for, or to any equitable relief whatsoever. That objection is made on behalf of J. C. Campbell and John A. Benson.

Mr. CUSHING.—The defendants, Cobban, Weirick and the Payette Lumber & Manufacturing Company make the same objection.

Mr. CONKLIN.—Q. What is your name?

A. R. B. Swayne.

Q. Where do you reside? A. In Oakland.

Q. Where did you formerly reside?

A. In Bakersfield.

Q. Were you a resident of Bakersfield in the years 1900 and 1901? A. Yes, sir.

Q. Are you acquainted with Mollie Conklin?

A. Yes, sir.

Q. I will ask you if, during the months of December, 1900, and January, February and March, 1901, you resided in Bakersfield? A. I did.

Q. During those months did you see Mollie Conklin in Bakersfield? A. I did.

Q. What approximately was the first time during the year 1900 that you saw her in Bakersfield?

A. I can't remember the date; but it was at a time when your [274] daughter was paralyzed. We were up there at your house. She was there for some time after that.

Q. State whether or not, if you know, she remained there that winter.

A. To the best of my recollection, she stayed there

(Deposition of R. B. Swayne.)

for a number of months, because the little girl was in a precarious condition, and she naturally stayed right there.

Cross-examination.

Mr. CAMPBELL.—Q. From where did she come?

A. From San Francisco.

Q. Did she reside in San Francisco at the time?

A. She spent some of her time here, and some there. Her time was passed between the two places.

Q. You are not able to say that, during that time, she was in San Francisco some of the time?

A. I wouldn't say but what she was during some of that time. She was in Bakersfield most of the time, I am sure.

Mr. CAMPBELL.—That is all.

Mr. CUSHING.—No questions.

R. B. SWAYNE. [275]

**[Deposition of Mrs. S. J. Coleman, for
Complainants.]**

Mrs. S. J. COLEMAN, a witness called on behalf of the complainants, being first duly sworn, testified as follows:

Mr. CAMPBELL.—I have an objection to register for the purpose of making the record straight. We object to the taking of the deposition of this witness on the ground that the notice is insufficient; that it does not comply with the Revised Statutes of the United States, or the statute concerning which it is attempted to take the deposition under; and an additional objection that the bill of complaint does not state any facts sufficient to entitle the complainant to

(Deposition of Mrs. S. J. Coleman.)

the equitable relief therein prayed for, or to any equitable relief whatsoever. That objection is made on behalf of J. C. Campbell and John A. Benson.

Mr. CUSHING.—The defendants, Cobban, Weirick and the Payette Lumber & Manufacturing Company, make the same objection.

Mr. CONKLIN.—Q. What is your name?

A. Sybil J. Coleman.

Q. Where do you reside?

A. 2717 Pacific Avenue, San Francisco.

Q. Are you acquainted with Mollie Conklin, one of the parties in this action? A. I am.

Q. Did you know Mrs. E. M. Reddy, in her lifetime? A. I did.

Q. Do you know Mrs. Olcese? A. I do.

Q. Do you know myself and Mr. J. C. Campbell?

A. I do.

Q. And Mr. Metson? A. I do.

Q. What relation do you bear towards Mrs. Emily M. Reddy? A. A daughter.

Q. Did you know Mr. Reddy in his lifetime—Mr. Patrick Reddy? A. Yes. [276]

Q. I will ask you if you were present at a meeting held in Mr. Campbell's office in the City and County of San Francisco, in the Crocker Building, at a time when negotiations were discussed in regard to selling lands, commonly known as the "Monache Lands"?

A. I was.

Q. Who was present at that meeting?

A. Mr. Campbell, Mrs. E. M. Reddy, Mrs. Mollie Conklin, N. E. Conklin, Mr. Benson and myself.

Q. Do you remember when that meeting was held?

(Deposition of Mrs. S. J. Coleman.)

A. I cannot tell.

Q. Do you remember the year?

A. No, I don't know anything about it.

Q. Will you please state what occurred—what was said at that meeting?

Mr. CUSHING.—We object to that question on the ground that it is incompetent, irrelevant and immaterial, hearsay, and not binding on defendants.

A. I don't remember clearly; the price of the land was what I paid more attention to.

Q. What price was stated?

A. I understood \$4 an acre.

Mr. CUSHING.—All these questions are subject to the same objection.

Q. What was understood to be done in regard to the transaction?

Mr. CAMPBELL.—I object to what was understood. That goes to the form of the question. Let her state what was said.

Mr. CUSHING.—I make the same objection; and also, that it calls for the opinion and conclusion of the witness.

Q. What transpired at that meeting?

A. I paid very little attention. The price of the land and the time for payment—that is the only thing that I remember clearly—I didn't pay much attention.

Q. What was to be drawn up in regard to the lands? [277] A. I don't remember.

Q. Were deeds to be drawn up in regard to the property?

Mr. CUSHING.—I object to the question on the

(Deposition of Mrs. S. J. Coleman.)

ground that it is leading.

A. I don't remember at this time.

Q. Do you remember as to whether it was discussed as to what was to be done with the deeds after they were drawn up?

A. No, I don't remember.

Q. You testified, did you not, Mrs. Coleman,—that is, your deposition was taken in regard to the “Monache Lands” in a case prior to the present one, was it not, Mrs. Coleman? A. Yes, sir.

Q. And your testimony given at that time was true, was it not? A. Yes, sir.

Mr. CAMPBELL.—I object to that question on the ground that that is not the proper way of impeaching a witness, nor of refreshing her recollection.

Q. Was anything said at that time in regard to papers being signed in regard to the “Monache Lands”? A. Yes, at my former deposition.

Q. What was said?

A. Had reference to deeds—what she thought she was signing.

Q. Was it said then that powers of attorney would be prepared?

A. I heard nothing about that at that first meeting in Mr. Campbell's office in the Crocker Building.

Q. Were you present after that, Mrs. Coleman, at the residence of Mrs. Reddy, where Mrs. Conklin and Mrs. Reddy were signing some documents?

A. I was.

Q. Where was it?

A. 2717 Pacific Avenue, my mother's home.

(Deposition of Mrs. S. J. Coleman.)

Q. Do you know how those documents got to the house? [278]

A. Brought by a boy, I don't know who—a messenger, or who—some boy brought them and left them.

Q. Did you see the boy that brought them?

A. No, I did not.

Q. During the time that they were signing those documents, did Mrs. Reddy and Mrs. Conklin and yourself discuss the character of those documents?

A. Yes, in a way.

Q. During that conversation, how did they term those documents?

Mr. CUSHING.—I object to that question on the ground that it is irrelevant, incompetent and immaterial; not the best evidence; hearsay; and not binding on these defendants.

Mr. CAMPBELL.—And not any conversation made in the presence of any of the defendants.

A. They thought they were signing deeds. There was a great many papers—big stack of papers. They read the first, the second, third, fourth and fifth that were on top, and they were all alike; and they thought all those papers were just the same. They said there is no use in reading any more. We will just go right ahead and sign them. I know they laughed about it because there were so many—so much trouble.

Mr. CUSHING.—I ask to have the answer stricken out on the ground that it is hearsay, and the opinion of the witness.

Q. Were you present, Mrs. Coleman, at the time

(Deposition of Mrs. S. J. Coleman.)

your mother, Emily M. Reddy, and myself had a conversation at her rooms on Turk Street, in an apartment house in which you were living—I have forgotten the name—in which I informed Mrs. Reddy that I had discovered powers of attorney to the “Monache Lands”?

Mr. CAMPBELL.—I object to the question on the ground that it is incompetent, irrelevant and immaterial; hearsay; and not binding on these defendants.

A. I don't think so. [279]

Q. You were not in the room at that time?

A. No.

Q. Are you one of the heirs in the Patrick Reddy estate, Mrs. Coleman? A. Yes.

Mr. CAMPBELL.—Mrs. Coleman was the sole heir of Mrs. Emily Reddy, who, by deed, took one-half of the Patrick Reddy estate. Mrs. Reddy got one-half.

Mr. CUSHING.—Not by deed.

Mr. CAMPBELL.—By will.

Mr. CONKLIN.—Q. At the time that you had this meeting in Mr. Campbell's office, who did most of the talking—who was the spokesman at that meeting?

A. I don't remember; I think Mr. Campbell was.

Q. Were you ever present at any other meeting, Mrs. Coleman? A. No.

Q. Who is your attorney, Mrs. Coleman, in the matter of the Reddy estate?

A. Wm. H. Metson.

Q. Were you present, Mrs. Coleman, at the time that I was in the Antlers Apartment on Turk Street, when a petition for the sale of the “Monache Lands” was about to be presented to the Court, and Mrs.

(Deposition of Mrs. S. J. Coleman.)

Reddy and I had a conversation in regard to that petition, and I was going over to Judge Coffey's court that morning? A. I think I was.

Q. (Continuing.) And Mrs. Reddy told me not to be afraid to speak and oppose that petition?

Mr. CUSHING.—I object to that question as being leading, and not binding on any of the defendants here, the conversation having taken place when none of the defendants were present.

A. My memory is not clear—so long ago. [280]

Q. Were you present when I disclosed to Mrs. Reddy that I had discovered that some powers of attorney were in existence, and Mrs. Reddy denounced them as forgeries,—saying that she had never signed any of them?

Mr. CUSHING.—I object to that question as leading, not binding on these defendants, and is a self-serving declaration of counsel.

A. I can't say that I was. It is a faint recollection—so faint.

Q. Were you present, Mrs. Coleman, at or about the time that Mr. Reddy was discussing the fact of going to Alaska to practice law? A. Yes.

Q. What did he say in regard to going to Alaska to practice law?

A. He was sick in bed, and couldn't go.

Q. And being sick in bed, he said he couldn't go, and concluded to send Mr. Metson, did he not?

A. Yes, sir.

Q. I will ask you—you have stated the names of the parties who were present at that meeting—I will ask you if Mr. Bernard was present at that meeting?

(Deposition of Mrs. S. J. Coleman.)

A. I don't think so.

Q. I will further ask you if your counsel has not informed you that none of these "Monache Lands" suits affects your interest in the property?

A. I don't think so; that I remember.

Q. Do you understand now whether or not your interest is affected by these transactions?

A. I don't understand very much about it—too much of it.

Q. Who was Milton Bernard, if you know?

A. He was always in Mr. Metson's office. [281]

Q. He was out in the outer office—the call-boy?

A. Yes.

Mr. CONKLIN.—That is all.

Cross-examination.

Mr. CAMPBELL.—Q. Mr. Edward Reddy was not present at that meeting, was he?

A. No, sir; that was the first meeting that we had at all.

Q. You understand that there was another meeting called after that? A. I wasn't present then.

Q. Do you know how this first meeting came about?

A. I don't know; I went down with my mother.

Q. After Mr. Reddy's death? A. Yes.

Q. You were present at Mr. Reddy's house during his last illness? A. Yes.

Q. You know that Mr. Reddy and Mr. Benson had been negotiating for the sale of the "Monache Lands" before Mr. Reddy's death? A. Yes.

Q. And you saw Mr. Benson at Mr. Reddy's house prior to Mr. Reddy's death, didn't you?

(Deposition of Mrs. S. J. Coleman.)

A. No, I never saw him there.

Q. Do you remember a conversation in the office at the time your mother, and Mrs. Conklin and Mr. Conklin was there, with myself,—and wasn't the discussion mostly as to what was the contract between Mr. Benson and Mr. Reddy?

A. I think I recall some conversation like that.

Q. And Mrs. Reddy, your mother, stated what she understood to have been the contract between Mr. Benson and Mr. Reddy? A. Yes, sir. [282]

Q. That is, your mother understood, and you and I understood that the price was to be \$4 an acre for the land? A. Yes.

Q. And Mr. Benson contended that his understanding with Mr. Reddy was \$3.80 an acre?

A. Well, I don't remember everything—much about \$3.80. I remember the \$4.

Q. And the conference between Mrs. Reddy, your mother, and yourself, and Mrs. Conklin and Mr. Conklin, was in relation to carrying out the contract made, or the negotiations made between Mr. Benson and Mr. Reddy, in his lifetime? A. Yes, sir.

Q. Do you know how Mr. Conklin and Mrs. Mollie Conklin happened to come into those negotiations?

A. Well, they owned half the land.

Q. Do you know who invited them in, or asked them to come in? A. I do not.

Q. Mr. N. E. Conklin, the gentleman who is here, is a son of Mrs. Mollie Conklin? A. Yes.

Q. And he is an attorney at law? A. Yes.

Q. A practicing lawyer? A. Yes.

Q. And during those negotiations, he represented

(Deposition of Mrs. S. J. Coleman.)

his mother? A. Yes, sir.

Q. Mrs. Coleman, Mr. Metson is the executor of your mother's will, is he not? A. Yes, sir.

Q. And Mr. Frisbie acts as his attorney, does he not? A. I guess so. [283]

Mr. CUSHING.—I think you are wrong about that. The record is the best evidence.

Mr. CAMPBELL.—That is all.

Mr. CONKLIN.—That is all.

SYBIL J. COLEMAN. [284]

Certificate of Special Examiner to Deposition, etc.

State of California,

City and County of San Francisco,—ss.

I hereby certify that, on the 21st day of March, A. D. 1910, before me, CHARLES R. HOLTON, a Commissioner duly appointed by the Circuit Court of the United States for the District of Idaho, Ninth Judicial Circuit, Central Division, and a Notary Public in and for said City and County of San Francisco, at my office in Room No. 519 on the Fifth Floor of the Metropolis Bank Building, at the southeast corner of Market and New Montgomery Streets, in said City and County of San Francisco, personally appeared, pursuant to the commission hereto annexed, between the hours of 10 o'clock A. M. and 12 M. of said day, three of the witnesses named in said commission, to wit, H. M. WRIGHT, R. B. SWAYNE and Mrs. SYBIL J. COLEMAN, and Norman E. Conklin, Esq., appeared as counsel for complainants, and Charles S. Cushing, Esq., appeared as counsel for defendants R. M. Cobban, E. B. Weirick, and the Payette Lumber & Manufac-

turing Company; and J. C. Campbell, Esq., *appear in propria persona* and as attorney for John A. Benson; and Wm. H. Metson, Esq., appeared as counsel for Mrs. Sybil J. Coleman, and the said H. M. Wright, R. B. Swayne and Mrs. Sybil J. Coleman, being each by me first duly cautioned and sworn to testify the whole truth, and, being carefully examined, deposed and said, as appears by their depositions hereto annexed.

And I further CERTIFY that the said depositions were then and there taken down in shorthand by me, and thereafter by me reduced to typewriting and were, after they had been reduced to typewriting, corrected and subscribed by said witnesses, in my presence, and that the same have been retained by me for the purpose *and* sealing up and directing the same to the clerk of the court, as required by law.
[285]

And I further CERTIFY that the reason why the said depositions were taken was that the said witnesses reside more than one hundred miles from Boise City, Idaho, the place where this cause is to be tried, to wit, said H. M. Wright resides in Berkeley, California, said R. B. Swayne resides in Oakland, California; and said Mrs. Sybil J. Coleman resides in San Francisco, California.

And I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause.

And I further CERTIFY that the fees for taking said depositions, to wit, \$16.50, have been paid to me by the complainant, Mollie Conklin, and that the same are just and reasonable.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal at the City and County of San Francisco, State of California, this 11th day of April, A. D. 1910.

[Seal] CHARLES R. HOLTON,
Commissioner and Notary Public in and for the City
and County of San Francisco, State of California.

[Endorsed]: Filed Nov. 4, 1911. A. L. Richardson, Clerk. [286]

*In the Circuit Court of the United States, Central
Division of the District of Idaho.*

IN EQUITY—CONSOLIDATED NUMBER 60.

UNITED STATES and MOLLIE CONKLIN,
Plaintiffs,

vs.

PAYETTE LUMBER AND MANUFACTURING
COMPANY, JOHN A. BENSON, JOSEPH
C. CAMPBELL, R. M. COBBAN, E. B.
WEIRICK, and E. B. WEIRICK, Trustee,
Defendants.

**Depositions of Joseph C. Campbell, J. A. Benson,
James H. Lavenson and Clara E. Glover.**

Taken before Flora Hall, Notary Public in and for the City and County of San Francisco, State of California, on April 28th, 29th, 30th and May 2d, 1910.

Opened by stipulation and filed Oct. 18, 1911.

A. L. RICHARDSON,

Clerk. [287]

*In the Circuit Court of the United States, Central
Division of the District of Idaho.*

IN EQUITY—CONSOLIDATED NO. 60.

UNITED STATES and MOLLIE CONKLIN,
Plaintiffs,

vs.

PAYETTE LUMBER AND MANUFACTUR-
ING COMPANY, JOHN A. BENSON, JO-
SEPH C. CAMPBELL, R. M. COBBAN,
E. B. WEIRICK, and E. B. WEIRICK,
Trustee,

Defendants.

It is hereby stipulated and agreed by and between counsel for the respective parties that the defendants, J. A. Benson and Joseph C. Campbell may take the depositions and testimony of Joseph C. Campbell, William H. Metson, Milton Bernard, James H. Lavenson, Clara E. Glover and John A. Benson, in the City and County of San Francisco, State of California, on Wednesday, April 27th, 1910, at ten o'clock A. M., of said day at Room 514 Balboa Building, corner of Second and Market Streets, before Flora Hall, a Notary Public in and for said city and county, and the taking of said testimony and depositions may by a Notary Public be continued from day to day until completed, and said depositions may be taken by any disinterested stenographer, and thereafter reduced to writing on a typewriter, and when so reduced to be signed by the several witnesses; said depositions and testimony to be used and read in evidence in the above-entitled

action with the same force and effect as if said depositions and testimony had been taken under commission duly issued in said cause, and said parties hereby waive any other [288] and further notice as to the time, place or manner of the taking of said testimony and depositions.

S. L. TIPTON,

Attorney for Plaintiff, the United States.

N. E. CONKLIN and

WM. B. DAVIDSON,

Attorneys for Plaintiff, Mollie Conklin.

CAVANAUGH & BLAKE,

Attorneys for Payette Lumber Company.

ALFRED A. FRASER,

Attorney for Joseph C. Campbell and John A. Benson.

RICHARDS & HAGA,

Attorneys for R. M. Cobban. [289]

*In the Circuit Court of the United States, Central
Division of the District of Idaho.*

IN EQUITY—CONSOLIDATED NUMBER 60.
UNITED STATES and MOLLIE CONKLIN,
Plaintiffs,

vs.

PAYETTE LUMBER AND MANUFACTURING
COMPANY, JOHN A. BENSON, JOSEPH
C. CAMPBELL, R. M. COBBAN, E. B.
WEIRICK, and E. B. WEIRICK, Trustee.
Defendants.

BE IT REMEMBERED, That pursuant to stipulation hereunto annexed, and on Thursday, April

28th, commencing at two o'clock P. M. of said day (to which time they have been duly and regularly continued by consent), the depositions of Joseph C. Campbell, John A. Benson, James H. Lavenson and Clara E. Glover, were taken before me, Flora Hall, a Notary Public, in and for the City and County of San Francisco, State of California, at Room No. 514 Balboa Building, corner of Second and Market Streets in the above-entitled action, now pending in the above-entitled court, said witnesses being each duly sworn to tell the truth, the whole truth and nothing but the truth before giving their respective testimony. Said witnesses were interrogated on direct examination by R. G. Hudson, Esq., and J. C. Campbell, Esq., and on cross-examination by Wm. B. Davidson, Esq., and testified as follows, to wit: [290]

[Deposition of J. C. Campbell, for Defendants.]

J. C. CAMPBELL, being first duly sworn, testified as follows:

Direct Examination.

Mr. HUDSON.—Q. Will you please state your name? A. Joseph C. Campbell.

Q. And occupation? A. Practicing law.

Q. Did you know the Reddy's, Mr. Campbell,—Patrick, and the other members of the Reddy family?

A. I did. I knew Patrick Reddy, Emily Reddy, his wife, and E. A. Reddy, his brother, a great many years.

Q. Are you acquainted with Mrs. Mollie Conklin and other members of the Conklin family?

(Deposition of J. C. Campbell.)

A. Yes, I am acquainted with Mrs. Mollie Conklin and Mr. N. E. Conklin, her son ; and I knew Mr. Alvah Conklin, the husband and father, prior to his death.

Q. Have you any knowledge of the Monache lands, the subject matter of the controversy in this action ?

A. I have.

Q. Will you state your knowledge of these lands that are the matter of controversy in this action ?

A. I presume you mean the matter of the contract between Benson and these other people.

Q. In relation to that contract, yes, Mr. Campbell. Just go on and tell it in your own way, if you please.

The WITNESS.—The Monache lands were owned, half and half, by Mr. Reddy and Mrs. Mollie Conklin, I believe, at the time of this contract, and prior to the death of Mr. Reddy. They were lands that were obtained by Alvah Conklin, the husband of Mollie Conklin, through one Broder, whose first name I have [291] forgotten. There was a great deal of litigation about them, and Mr. Reddy had a contract whereby he was to receive the undivided one-half of those lands for litigating the case of Broder vs. Conklin. The case was finally adjudicated in favor of the Conklins, and Mr. Conklin, my recollection is, deeded his share of them, or his undivided one-half of them, to his wife, and Mr. Reddy obtained one-half of the lands,—whether by deed from Alvah Conklin or from Mollie Conklin, I don't know. That is, I have never investigated it to determine. At any rate, prior to the death of Mr. Reddy, he was the owner of the undivided one-half of these so-called

(Deposition of J. C. Campbell.)

Monache lands, which my recollection is, was something like nine thousand acres. Mr. Reddy, prior to his death, entered into negotiations with John A. Benson, who was a client of his, and of the office, for quite a number of years prior to that time, either to sell to or through Benson these Monache lands for a certain price. I am not positive now as to what the price was to be between Mr. Reddy and Benson. The last time I ever saw Mr. Reddy alive was, I think, some week or ten days before his death, when I was at his house; and in my interview with him—

Mr. DAVIDSON.—We will object to the introduction of any evidence as to any conversation between the witness and Mr. Reddy in regard to any contract for the sale of any of this property, unless it is shown that the contract was in writing and relates to the contract afterwards made between Mr. Benson and Mrs. Conklin, as irrelevant, incompetent and immaterial.

The WITNESS.—(Continuing.) Mr. Reddy informed me that he had made a contract with Benson, was expecting to consummate it within a very short time, in relation to the sale of this Monache land, as I said before, either through or to Benson. [292] And I went away to the northern part of the State, and Mr. Reddy died when I was away and I didn't see him any more. After Mr. Reddy's death, there was considerable expense to the estate which had been incurred by Mrs. Reddy in procuring a tombstone and the lot in the cemetery and certain things of that kind; and Mrs. Reddy was informed

(Deposition of J. C. Campbell.)

by myself that there was not money to pay those debts which had been incurred, and then she asked me what was the matter with getting money from Benson for this land. She was present in Mr. Reddy's room at the time that he told me about the negotiations with Benson about this land, and I told her "I didn't know—we might see about it." I called Mr. Benson at the phone and my recollection is now that he came over, and Mr. Benson and Mrs. Reddy and myself had a conversation about it, but nothing of any consequence was arrived at on that day. Within some time after that, I will not be positive as to the dates, Mrs. Reddy, Mrs. Conklin, Mr. N. E. Conklin, her son, came down to the office, and Mr. Benson came over and there the matter was talked over about the sale of these lands, and a controversy arose about the price. There was a good deal of talk about \$3.80, or \$4.00 an acre, which was the offer of Benson; now, I am not positive in my own mind, whether Benson made them an offer of \$4.00 an acre, with five per cent commission, which would be \$3.80, or whether it was a straight \$4.00. I am frank to say that if I had not heard the other people testify in this case that it was \$3.80, my impression would be it was \$4.00.

Mr. N. E. Conklin thought that the price was too small and stated that he thought that he could get a better offer for the lands. That meeting was adjourned for several days, to [293] give him an opportunity to ascertain if he could get a better bid for the Monache lands. As I say, it went on for

(Deposition of J. C. Campbell.)

some time, and finally Mr. N. E. Conklin, his mother, Mrs. Mollie Conklin and Mrs. Reddy, accompanied by her daughter, Mrs. Coleman, and Mr. Edward Reddy and Mr. Benson, met in my office, and they made an agreement with Mr. Benson to take those lands. I would still be of the opinion that he was to take them for \$4.00 an acre, if I hadn't heard the other people testify. But about that, I am not positive.

They discussed the matter. I remember that Benson told them that the lands would have to be deeded to the United States; they were what he called "scrip" lands, and the money for these lands was to be paid upon approval by the Land Department, through the Anglo-Californian Bank. I have no recollection about it being said that the papers were to be deposited in escrow in the Anglo-Californian Bank, but I do remember that the money was to be paid through the Anglo-Californian Bank. Before this last conference broke up, Mr. Holland Smith was called into the office. He was a notary public; and the matter was talked over before Mr. Holland Smith, Mr. Benson and Mr. N. E. Conklin. All of these people, Smith, Conklin and Benson, my recollection is, left the office together, and the Reddys followed them out. Probably we had a little conversation there about some other things. The next I knew anything about it was, there was a large bundle of papers, deeds—well, I will say papers, because I didn't—I have no present recollection of examining what they were,

(Deposition of J. C. Campbell.)

brought up for execution by Mrs. Reddy, Mr. E. A. Reddy, and the other parties. I saw Mr. Holland Smith, Mrs. Conklin and Mrs. Reddy in one of our outer offices there with a lot of papers on the desk. What they were [294] I am not prepared to say, but Mr. Edward Reddy, the brother of Mr. Patrick Reddy, was at that time the Superintendent of the San Francisco Almshouse, and he was ill, and I took Mr. Holland Smith, who had these papers, out to the Almshouse in my carriage; and Mr. Reddy, Mr. Edward Reddy, sat up in his bed and signed a large number of them, and I brought Mr. Smith away. After Mr. Smith's death, his wife presented to me a bill for one hundred dollars for acknowledging the papers in this Reddy-Benson matter.

Mr. DAVIDSON.—I will ask at this time to strike out all the testimony offered with regard to the bill presented for the taking of the acknowledgments, on the ground that it is not the best evidence; the bill itself would be the best evidence as to what it was presented for, and as immaterial, incompetent and irrelevant; no foundation has been laid for secondary evidence.

Mr. CAMPBELL.—The motion to strike out is resisted.

The WITNESS.—I paid Mrs. Mary Smith, widow of Holland Smith, one hundred dollars for having taken those acknowledgments. I paid her \$100 which was charged by her husband for taking those acknowledgments.

After this trip to the Almshouse, for some time—

(Deposition of J. C. Campbell.)

I am not able to say how long—Mrs. Reddy came down to the office and spoke about wanting some money. I called Mr. Benson up, and asked him if he couldn't pay some money on that land deal, and he sent over a check, payable to me, for \$5,000, and I put it in the firm account. A firm check was drawn for Mrs. Mollie Conklin, for one-half of it, and Mrs. Reddy was given the other half of it. There was one payment; after that, some little time, Mrs. Reddy was down again, and I stirred Mr. Benson up again, and he sent me over a check for \$500.00. I [295] immediately turned that in to the firm account, and gave, the firm gave Mrs. Reddy a check for \$250, and a check was drawn to Mrs. Conklin for \$250. That was all of the money that I know of having been paid Mrs. Conklin. That is, \$2,500 and \$250.

Some time after that, how long I can't now remember, Mr. Norman Conklin was in the office, and in talking about this land deal, he complained that Mr. Benson was not paying the money as rapidly as he thought he should, and he also stated that he knew, or had heard of some man down Bakersfield way who would give \$6.00 an acre now for the land. My recollection is that I called Benson up at the phone and asked him what was the matter, and told him that Mr. Conklin said he could get \$6 an acre for the land. I remember that Benson said that if he could do it, he would be glad, because he couldn't get \$6.00 an acre for it, or words to that effect. I told Mr. Conklin to see if he couldn't get it, and if

(Deposition of J. C. Campbell.)

Benson wasn't keeping the contract, that the matter could—they could take it out of his hands or away from him, or something to that effect. He went away and I never heard anything more about any \$6.00 man that I remember of.

Afterwards, in the early part of 1904, after my return from New York, when Mr. Benson had been arrested and charged with conspiracy in the Washington case, for which he was afterwards tried and acquitted, Mr. Conklin came into my office again. Whether he brought Mrs. Reddy in with him the first time or whether he brought her in the second time, I am not positive. But I do remember that he said to me that “now they proposed to make Old Benson pay mighty well for those lands; that the Government was after him now, and that he would have to settle [296] with them and pay them well, or there would be trouble.” I asked him if he meant by that that he proposed to use Benson's trouble as a leverage to make him pay a good price or a bigger price for the lands, or something of that kind; and my recollection is—I got an equivocal answer—that it was neither yes or no, but he repeated that now he was in trouble, that the Government was after him, and he would have to pay mighty well for those lands. I used some pretty strong language to him at that time, and then it is my recollection that he came in with Mrs. Reddy, and Mrs. Reddy asked about that, and I said to her “Mrs. Reddy, this looks to me”—in the presence of Mr. Conklin—“like this young man is trying to use the

(Deposition of J. C. Campbell.)

fact that Benson is in trouble, to get him to pay a larger price for those lands." Mr. Conklin then said, "Do you mean to say that I am trying to blackmail him?" I said, "That is about the way it looks to me," or "That is about the size of it," or something of that kind; and he went out.

I am a little ahead of the story, however. Before this time, before Benson was arrested, and after the \$6.00 episode, Mr. Conklin came in and told me that he either had been to Washington, or had sent someone to Washington with power and that they had cancelled the powers of attorney which his mother had given Benson, and that they would not—my recollection is that they wouldn't take any more money from Benson. I sent for Mrs. Reddy. I told her that and asked her if she knew anything about it, and I think she told me she did; and I asked her if that was her desire, and she said "No"; and after that time, and up to the time that Benson was in trouble, my recollection is, that he paid to Mrs. Reddy something like \$12,000, or twelve thousand five hundred dollars, and she accepted it as the executrix or as the representative [297] of the estate of Patrick Reddy. I don't know whether she was the executrix or administratrix with the will annexed.

Mr. DAVIDSON.—Complainants at this time move to strike out that part of the testimony of the witness relating to the conversation held between himself and Mrs. Reddy as hearsay and not binding upon the complainants, or either of them, in this

(Deposition of J. C. Campbell.)

case, and as incompetent, irrelevant and immaterial and not tending to prove any of the issues in this case.

The WITNESS.—As far as the contract goes, I believe that is all that I now remember. The complaint alleges that I was in the employ and acting as attorney of Mollie Conklin at the time that this contract was made. That is not a fact. In all the negotiations between Mr. Benson, Mrs. Reddy and Mrs. Conklin and Edward Reddy, Mollie Conklin was represented by her son, N. E. Conklin, who is an attorney. The estate of Mr. Conklin was in the office at that time in process of settlement, but during the process of settlement of that estate, Mr. Reddy had a very serious disagreement with Mr. Norman Conklin, the attorney, who is the son of Mollie Conklin and who represented her in this thing, and he absolutely refused to have anything to do with any business of theirs, and at that time so notified the office and so notified me. It grew out of certain rents which had been collected for this pasturage land by Mr. N. E. Conklin, as I understood it, and for which he hadn't accounted to Mr. Reddy for his proportionate share. Mr. Reddy found it out through a man by the name of—well, a man who had the land rented—his name escapes me now; and they had quite a spirited controversy about it. But in none of the proceedings—

Mr. DAVIDSON.—(Interrupting.) Complainant Mollie Conklin moves to strike out all that part of the testimony of the witness [298] referring

(Deposition of J. C. Campbell.)

to any conversations or disagreements between N. E. Conklin and Patrick Reddy in his lifetime, as irrelevant, immaterial and incompetent, and not tending to prove any of the issues in this case and not binding upon the complainant Mollie Conklin.

The WITNESS.—I believe that is all. (To Mr. Benson.) Do you want to ask me any questions, Mr. Benson?

Mr. BENSON.—Q. What month and what year did these transactions to which you have testified occur?

A. It was the year 1900, is my recollection—when did Patrick Reddy die?

Mr. CONKLIN.—April 26, 1900.

The WITNESS.—It was in 1900, then, just a short time after Mr. Reddy's death; by that, I mean, maybe two months, was the first of all these three conversations out of which the final agreement grew.

Mr. BENSON.—Q. Wasn't it fully explained at the meeting about which you have testified between the Conklins and Mrs. Reddy, and between your office, that before these lands could be made available, that they would have to be deeded to the United States?

A. That is my recollection, that they would have to be deeded; and the money was to be paid through the Anglo-Californian Bank when they were accepted or approved, or something of that kind.

Q. Was it by the Commissioner of the General Land Office?

(Deposition of J. C. Campbell.)

Mr. DAVIDSON.—We object to that question as leading.

Mr. BENSON.—Q. Or approved by the authorities?

Mr. DAVIDSON.—Objected to on the same ground. [298½]

The WITNESS.—I wouldn't state that it was said approved by whom; but when the deeds were accepted and approved. I remember that because that was the first time that I ever understood what they called "scrip." I always thought that "scrip" was a kind of certificate issued by the Government of the United States which said: "This entitles the bearer to get a certain number of acres," and he could take that to the land office; and I never understood the minutia of it and I don't know that I do now, but I know that there was talk about the lands, and in talking about the \$4.00 or \$3.80 there was some conversation to the effect that there had to be an abstract of title obtained from the counties in which the lands were situate, and I know Benson said that that would cost considerable money; and he said—he explained that had to go with the deeds.

Q. Wasn't the form of deed discussed in some way, that is, that there was an interest of the devisees and also the interest of the estate?

Mr. DAVIDSON.—That is objected to as leading and suggestive.

A. I have no recollection about that. The formal matters were not taken up in my presence. It was just a general conversation, and general agree-

(Deposition of J. C. Campbell.)

ment had there in the office.

Q. Did you ever see and pass upon one of the deeds or transfers to the United States, as to whether, in your opinion, it gave all the title to the United States possible?

A. I don't remember ever having seen any of the deeds, for this reason: The man who had charge of our probate department then was Mr. Hugh H. Brown, and immediately after this talk there was an application made (a copy of which I shall produce here) to the Probate Court by our office, Mr. Brown doing it, on behalf [299] of the Reddy estate, by Mrs. Reddy asking the authority of the Probate Court to sell and exchange these lands for other lands. So, I have no recollection of ever having seen a deed.

Cross-examination.

(By Mr. DAVIDSON.)

Q. Now, Mr. Campbell, I understood you to say on your direct examination that the first conference you had in regard to this matter after the death of Mr. Reddy, was between yourself, Mrs. Reddy and Mr. Benson? A. That is my recollection.

Q. Now, about when did that conference take place?

A. Well, that is something that I couldn't be definite about; it was after, some little time after the death of Mr. Reddy; I suppose that I could find out pretty near from the records in the Reddy estate. It was at or about the time that Mrs. Reddy made a contract with some tombstone people here to erect a

(Deposition of J. C. Campbell.)

tombstone for Mr. Reddy at the cost, I think, of \$1,200.00.

Q. Now, how long after the conference between you and Mrs. Reddy and Mr. Benson was it that you first had a conference with Mollie Conklin, the complainant herein?

A. My recollection is that was but a few days, but still, it might have been a week or ten days, or such a matter. I wouldn't be bound by dates. That was in 1900, and that is a long time ago. I have done a whole lot of things since then.

Q. Who was present at that conference, the first conference, with Mollie Conklin, besides yourself, Mr. Benson and Mrs. Reddy and Mollie Conklin?

A. Mr. N. E. Conklin was present at every conference at which his mother was. Whether Mrs. Coleman was at that conference [300] or whether she was at the conference at which Mr. Ned Reddy was, I am not able to tell you.

Q. Then, I understand you to say Mr. Ned Reddy was not present at the first conference—I mean the first one at which Mrs. Mollie Conklin was present?

A. Well, now, I am somewhat hazy in regard to that, but I think not.

Q. That is your present recollection?

A. That is my present recollection now.

Q. Are you acquainted with Mrs. Olcese, the daughter of Mrs. Mollie Conklin?

A. Yes, I know her.

Q. Was she present at the first conference, the

(Deposition of J. C. Campbell.)

conference between Mr. Benson and Mrs. Mollie Conklin?

A. It is my recollection that Mrs. Olcese was not present at any conference I was ever at.

Q. She may have been and you have forgotten it, may she not?

A. I don't believe so. I don't think Mrs. Olcese was ever there.

Q. Then, your recollection is that Mr. Benson, Mrs. Reddy, Mrs. Conklin and yourself were all the persons present at the first conference, and Mr. N. E. Conklin?

A. Yes. You say Mrs. Reddy, Mrs. Mollie Conklin, Mr. Benson, N. E. Conklin and myself?

Q. Yes, sir.

A. That is my recollection; it would be the second conference between Mrs. Reddy and Benson, but the first conference at which Mrs. Mollie Conklin was present.

Q. Now, how long did that conference last, Mr. Campbell? A. I am not able to state. [301]

Q. There was no deal made at that time?

A. No.

Q. How long after that was it that you had the second conference in your office between Mr. Benson and Mrs. Reddy and Mrs. Conklin?

A. I think it was quite a few days; maybe a couple of weeks; maybe more.

Q. Now, who were present at that second conference when Mrs. Conklin was present?

A. Well, my recollection is—and I think it is

(Deposition of J. C. Campbell.)

pretty good, because I have a kind of photograph now in my eye of it—there was Mrs. Conklin and Mrs. Reddy and Mrs. Coleman and Mr. Benson and Ned Reddy, Mr. N. E. Conklin and myself, and a part of the time, Milton Bernard, a young man, a clerk in our office—whether he was there all the time I don't know; but I remember a certain circumstance which happened that impresses it upon my mind that he was there. Mr. Ned Reddy was sitting over like that (showing) in the corner, and he went to lean back, and something got the matter with his chair, and I remember distinctly he fell over in a way, and I remember distinctly Milton helping him up in his chair, and placing it in position. He wasn't well then.

Q. Now, are you positive that Mrs. Coleman was present at the time of the conference you have just related?

A. It seems so to me; I wouldn't swear positively that she was present at that meeting, or which one she was present at, or whether she was there at both meetings, but she was present at one meeting; I can't say whether it was the meeting when Ned Reddy was there, or whether it was just the one that Ned Reddy wasn't there—

Q. Now, Mr. Campbell, was Mrs. Olcese present at this conference [302] you have just testified in reference to?

A. I have no recollection; I would say no.

Q. You have no recollection of seeing her?

A. I would say Mrs. Olcese was not present at any

(Deposition of J. C. Campbell.)

conference that was held in my office in relation to this matter.

Q. Now, about when as near as you can remember, was it that that second conference was held in which Mrs. Conklin was present?

A. Well, that was—well, to be positive, it was within a month between the first, I would think, because at the first conference Mr. N. E. Conklin thought the price was not sufficient, and he was given time to find out if he couldn't get a bigger price for the property; it might have been but two weeks; but as to the time, Mr. Davidson, I can't tell you.

Q. You have no recollection as to what month it would be?

A. No, I wouldn't know what month it was.

Q. Are you positive, Mr. Campbell, that Mr. Conklin and his mother, Mollie Conklin, had two conferences in your office with Mr. Benson and Mrs. Reddy after the death of Mr. Patrick Reddy, and up to the time the contract was made?

A. Quite positive, quite positive.

Q. You are quite positive? A. Yes, sir.

Q. Would you say your recollection is good as to the matter?

A. Yes, because at the first talk or conference, Mr. N. E. Conklin was not willing to accept the figures of Mr. Benson and was going around to see if he couldn't get a better price.

Q. Now, you say at this conference, the last conference before the deal was consummated, as you

(Deposition of J. C. Campbell.)

say, that the price agreed upon, as your recollection is, was \$4 an acre for the land? [303]

A. That would be my recollection, if I hadn't known of the other people testifying.

Q. Your independent recollection is \$4.00 an acre?

A. I know \$4.00 was the price but whether Benson was to be allowed five per cent of that, now, is something that my mind is hazy about.

Q. Now, Mr. Campbell, was that agreement reduced to writing? A. Not then.

Q. Was it ever reduced to writing?

A. Not to my knowledge.

Q. What, if any steps, were to be taken toward perfecting the deal for the sale of the Monache lands?

A. I understood that Mr. Benson, Mr. N. E. Conklin, and Holland Smith, were to prepare the papers that were necessary to carry out the agreement.

Q. Who was to pay the expenses of the preparation of the necessary papers to carry out the deal?

A. I don't recollect of anything being said about that at all.

Q. Now, you are positive that Mr. Holland Smith was called into your office and participated in part in this second or last conference?

A. I am satisfied of that.

Q. You are satisfied of that? A. Yes, sir.

Q. Was anyone else besides Mr. Conklin, Mr. Benson and Mr. Holland Smith to participate, if you know, or have anything to do with drawing the papers necessary to carry out the contract which you say was made?

(Deposition of J. C. Campbell.)

A. I won't say as to that; I will say that I am only just [304] giving you my understanding now. I don't remember that anything was said positively in regard to that.

Q. Mr. Campbell, you testified, did you not, gave a written deposition in the case of Mollie Conklin, plaintiff, vs. John A. Benson, Thomas B. Walker, Chester L. Hovey and others, in the Superior Court in and for the County of Modoc, State of California?

A. Yes, sir.

Q. I will ask you whether or not in that deposition in that case, in your examination in chief, you were asked this question: "State whether or not you ever made any representation to Mr. Conklin or his mother, the plaintiff, that the papers which had been prepared to be signed by her were of any character or kind?" If you desire, you may examine the record and see whether or not such question was asked you. I call your attention to that question there (indicating). A. Yes, I testified to that.

Q. That question was asked you?

A. Yes, that is right.

Q. Now, I will ask you whether or not in reply to that question you did not state, "I never did; I didn't know what the papers were. I heard Mr. Benson explain to them the method of getting the land into the Government and getting it out, but what papers they were to sign or what papers they were to get up, was left to Holland Smith, Milton Bernard and Benson; the character of the papers, the routine of it, I didn't know." You may state whether or not you

(Deposition of J. C. Campbell.)

made that answer in reply to the question just called to your attention. A. I guess I did.

Q. Was that statement true?

A. I think it was true, as far as it goes, yes, sir.

[305]

Q. Will you now say that the papers were to be prepared by Mr. Milton Bernard, Mr. Benson and Holland Smith?

A. I said that was my understanding of it, that they were to do it. Probably Milton was to help; I don't remember about that now.

Q. I will ask you whether or not your understanding of the matter has changed since the time you testified in the matter just called to your attention, and this time?

A. No, my understanding has not changed, but I now remember that Mr. Conklin went out with Benson and Holland Smith. For the time being I had forgotten Milton. The character of the papers I didn't know. I just was testifying from inference.

Q. There was nothing said in regard to who was to draw up the papers is the way I understand it?

A. There was nothing said about a written contract; there was nothing said, as I remember it now, as to what the papers were to be, or who was to prepare them. Mr. Holland Smith, Mr. Conklin and Mr. Benson and probably Milton went out together and I drew the inference that they were going to straighten the matter up.

Q. So that you say that there was nothing said at that time as to what papers should be prepared to

(Deposition of J. C. Campbell.)

carry out the deal? A. No details.

Q. Was there anything said at that time in regard to any deeds to be made to the land?

A. That they were—that they agreed to make a deed—no, not to my recollection.

Q. Nothing was said about that?

A. My recollection is that in the explanation as to how the land was to be disposed of, that Mr. Benson explained what was necessary to be done, but that they said, “Now, we will go and [306] make a deed”; “now we will go and make a contract,” “now we will go and make a power of attorney,” I have no recollection of anything like that being said.

Q. Have you any recollection of anything being said at that time with regard to any application being made out by Mollie Conklin and the representatives of the Reddy estate for the selection of lieu lands?

A. My recollection is that there was no specific paper mentioned in my presence.

Q. Nothing was said about any powers of attorney?

A. Mr. Benson simply explained what was necessary to be done, and the main thing that remains in my mind is the fact that they finally had come to a conclusion, and that they left—Holland Smith, and probably Milton—I had forgotten about Milton. I know Mr. Conklin and Mr. Benson and Holland Smith left together and I took it that they were to get up whatever papers there were to be prepared.

Q. Did Mr. Benson say at that time, in the presence of Mr. Conklin and Mr. Ned Reddy and Mrs. Emily Reddy that he would have to prepare the neces-

(Deposition of J. C. Campbell.)

sary papers? A. Perhaps he did.

Q. You may have forgotten about that?

A. I don't recollect what was said about any particular papers or anything of that kind. I didn't charge my memory particularly with that.

Q. Now, Mr. Campbell, what was to be done with these papers under the agreement, after they were prepared?

A. Now, as to that, I can't recollect, Mr. Davidson. All that I remember is that the money was to be paid through the Anglo-Californian Bank when the land was approved—it was [307] talked generally about the land and I didn't charge my memory whether he particularly said selections were approved, but my recollection is that, outside of simply the explanation of what would have to be done, that there was not any particular act agreed upon that they would do, in my presence.

Q. You were the attorney, were you not, your firm was the attorney for the Reddy estate?

A. Yes, sir.

Q. Now, was it agreed at that time that all of this property should be conveyed to the Government and selections or the right to make selections, turned over to Mr. Benson without any security or any payment therefor?

A. The Reddy estate proposition—the application was made to the Probate Court, and I don't understand—I will simply say, that I don't remember any such agreement, or what agreement was made in relation to that.

(Deposition of J. C. Campbell.)

Q. So, you don't remember whether, under the agreement, the lands were to be turned over to Mr. Benson previous to payment or not?

A. The money was to be paid through the Anglo-Californian Bank on the approval of the titles.

Q. On the approval of the titles?

A. That is my recollection of it; there was not—as I remember, there was not any particular thing said about security, or anything of that kind, because that was only—it was a general talk, and I know Mr. Brown went to the Probate Court to get the approval of what was done.

Q. I believe you stated that under the agreement, as you understood it, Mr. Benson was to procure the abstract of titles of this property. [308]

A. He stated that he would do it. Now, wait a moment. He stated that abstracts would have to be prepared and that that would cost a good deal of money—in that conference; whether he did get the abstracts—

Q. (Interrupting.) I was asking you, Mr. Campbell, whether or not Mr. Benson was to procure the abstracts of the property?

A. It seems so to me. I won't say that he agreed to do it; I wouldn't be bound by a statement of that kind, but I know he said, when they were negotiating about the price, the cost of putting this deal through, he stated something about the cost of having to get abstracts, or something of that kind.

Q. Now, it may have been agreed that after these titles were approved, that the papers were to be

(Deposition of J. C. Campbell.)

placed in escrow, may it not?

A. Yes, it may have been. I wouldn't say that it was not. I only have this recollection. That the money was to be paid when the titles were approved, through the Anglo-Californian Bank. Now, that is the only impression that it made on me.

Q. Now, as I remember you stated that some time after this second conference, there was a large bundle of papers came to your office, in connection with this Monache land deal?

A. They were brought by Mr. Holland Smith.

Q. They were brought there by Mr. Holland Smith? A. Yes, sir.

Q. You did not examine those papers? A. No.

Q. Now, how long after the papers were brought there was it before you saw Mr. Holland Smith, Mrs. Mollie Conklin and Mrs. Reddy signing papers, as you testified to?

A. I didn't say I saw them signing papers.

Q. Then I was mistaken. [309]

A. I saw Mr. Holland Smith, Mrs. Reddy and Mrs. Mollie Conklin out in one of the front offices, and there was a bundle of papers there. I didn't see either Mrs. Conklin or Mrs. Reddy sign any of the papers. The only person I ever saw sign any of them was Ned Reddy, the time I took Holland Smith out to the Almshouse.

Q. About how long to your knowledge were Mr. Holland Smith, Mrs. Mollie Conklin and Mrs. Emily Reddy in this outer office at the time you say you saw them with this bundle of papers?

(Deposition of J. C. Campbell.)

A. I don't know; my recollection is I just passed through.

Q. Was that before or after the time that you went with Mr. Smith to see Mr. Ned Reddy, at the time you spoke of, out at the Almshouse?

A. To the best of my recollection, it was—I wouldn't say whether before or after, but it was within a few days one way or the other.

Q. You saw Mr. Ned Reddy sign the papers at the Almshouse? A. I saw him sign a lot of papers.

Q. Did you examine those papers? A. No.

Q. Can you state now what those papers consisted of?

A. Not from examining them; only from the talk of Ned Reddy and Holland Smith, and simply from what Holland Smith told me.

Q. Now, Mr. Campbell, what would be your best judgment as to the number of papers that were signed by Mr. Ned Reddy at that time?

A. Well, it would be simply a guess.

Q. I am asking you for your best impression.

A. And I would have to take into consideration the amount of money that we paid Holland Smith. I would say any where between thirty and fifty. He was quite a while at it. I remember [310] I saw them lift him up in bed and he started in; and I went out and sat down on the porch and talked with Mrs. Reddy and smoked a cigar, probably, while they were doing it.

Q. Now, those are the only papers that you ever saw Mr. Reddy sign at one time?

(Deposition of J. C. Campbell.)

A. That is my recollection.

Q. Now, do you remember, Mr. Campbell, when Mr. Holland Smith died?

A. No, but it was a couple of years after this transaction, at least, I think.

Q. Do you remember when Mr. Ned Reddy died?

A. It seems to me that Mr. Ned Reddy died within a year after Mr. Pat, but I can't tell you the dates. I could tell by the records here in the office. We have the records, but from recollection, I can't tell. It seems to me that he died within a year after his brother.

Q. Now, you say that after the death of Holland Smith, his widow presented a bill for a hundred dollars in connection with the acknowledgments taken in this case?

A. She brought a little book into the office in which he had kept his charges, and she said, "Here is Hol's book"—we always called him Hol. "Here is a hundred dollars charge against you for things done in the—for acknowledgments taken in the Reddy estate—it was Reddy contract," and I gave her a hundred dollars, that is, the firm gave her a hundred dollars. Mind you, we keep our account with notaries just like we do—like all offices do; they charge everything to the lawyers. She had in that book items charged to Reddy contracts or deeds—Reddy contracts—something like that, by which we knew it was a charge against the Reddy estate, and we paid it. Now, I think I can give you that from Mr. Jacobs' books, if [311] you want it.

(Deposition of J. C. Campbell.)

Q. I believe you may get the date for us.

A. I will see if I can't get it.

Q. Now, about how long after that trip you made to the Almshouse with Mr. Smith to take Ned Reddy's acknowledgment, was it that you received this \$5,000 payment from Mr. Benson? A. I can't tell you.

Q. Can you ascertain that date, Mr. Campbell?

A. Well, I don't know; maybe I can. (Sends for account.)

Q. I believe you stated that the \$500 payment was made shortly after that?

A. That is my recollection.

Q. Now, when was it that you received—or had the conversation with Mr. N. E. Conklin, in which he informed you that he had a man who would pay \$6 an acre for the land?

A. It was some time after the \$250 had been given to his mother, and it runs in my head that was just—you know how hazy those things must be—but it was six months or such a matter, or maybe more.

Q. Six months or more after?

A. Yes. Now, I think, Mr. Davidson, if you will look you will find a letter from me, addressed either to Mrs. Mollie Conklin or Mr. N. E. Conklin, about this subject, and about if Benson didn't come through that they would have a right to void the contract or something of that kind.

Mr. DAVIDSON.—I think I have a certified copy of some depositions and I think there is a copy of that letter shown.

The WITNESS.—See if there is not a copy of that

(Deposition of J. C. Campbell.)

letter in there.

Q. Mr. Campbell I will call your attention to a copy of the testimony of Mrs. N. E. Conklin in this case, referring to [312] Complainant's Exhibit "P," and you may examine that and state whether or not that is the letter that you referred to just a moment ago. (Handing transcript to Mr. Campbell.)

The WITNESS.—I will state now that Edward A. Reddy died April 21, 1901.

A. Yes, I wrote that letter.

Q. That is about the time that you say that you had the conversation with Mr. N. E. Conklin in regard to the man whom you say he stated would pay \$6.00 an acre for the land?

A. I am not positive about that; I presume so, but it seems to me that this letter was one which was written afterwards, and my recollection is that (reading), "but I would suggest that after you have been so informed, you do not annoy your aunt Em. by a letter of the character that yours of the 15th is." This letter I wrote for Mrs. Reddy in answer, as I remember, to some letter which they had written to Mrs. Reddy. Now, I don't remember what that letter was.

Q. And you think that the conference then that you refer to in regard to this disagreement between Mrs. and Mr. Conklin and Mr. Benson was previous to the date of this letter?

A. Yes, sir; that was probably a continuation of it, but I don't want to be bound by this statement.

Q. Now, are you positive that that conversation

(Deposition of J. C. Campbell.)

took place in your office between yourself and Mr. N. E. Conklin?

A. Oh, yes; the conversation I spoke about I am satisfied did.

Q. Is it not a fact, Mr. Campbell, that this matter was all carried on between yourself and Mr. Conklin by letter and telegraph, Mr. Conklin being at that time in Bakersfield, Cal.?

A. There was correspondence, but my recollection is that the first time I ever heard of their being able to get \$6 an acre for this land was by word of mouth, from Mr. Conklin, and my recollection is that that time he went back to Bakersfield; it [313] may have been he was just here at the time, but I am quite positive he told me about being able to get \$6 and he may have written to me to the same effect. I don't know.

Q. Now, Mr. Campbell, I will call your attention to a letter in this case, marked Complainant's Exhibit "O," as contained in the deposition of Mr. N. E. Conklin in this case, and ask you to examine that letter and state whether or not you wrote that letter.

A. (After examining.) Yes, sir.

Q. Now, the date of that letter is January 29, 1902, is it not, Mr. Campbell? A. Yes, sir.

Q. You may state whether or not the conversation took place about the time you received that letter, the conversation between yourself and Mr. Conklin.

A. My recollection would be that we had the conversation before.

Q. Before this letter?

(Deposition of J. C. Campbell.)

A. Before this letter, and that this correspondence—my recollection is that he was going down to see about the party and that would be my recollection that this letter, this correspondence, followed our previous talk about being able to get \$6 and it was that Benson was not paying for the land, and was not getting the thing through.

Q. Now, did you have any correspondence with Mr. N. E. Conklin between the time that you have stated that he informed you that he had a man who would pay \$6 an acre for the land, and the time that you had the conversation with him early in 1904?

A. My recollection is yes, but you put some words into my mouth there; if I stated that Mr. Conklin said he had a man that would give \$6 an acre, I didn't mean to convey the idea that [314] he said he had a man who had made an offer of \$6 an acre, but a man to whom he thought he could sell it for \$6 an acre.

Q. Well, I don't know whether you answered the question as to whether there was any conversation between you and Mr. Conklin between the conversation you have just referred to and the one in the early part of 1904?

A. I had this conversation about the man who would give—whom he thought would give \$6 an acre—I don't want to be bound by the exact language—but the impression that he conveyed to me—I can't give you the exact chronology of those conversations. I have a conversation about \$6 an acre; I had a conversation with Mr. Conklin in which he said that he had either gone to Washington himself or someone

(Deposition of J. C. Campbell.)

had gone for him and revoked or looked into revoking the powers of attorney at Washington; and those two conversations were before the conversation which I had sometime in the early part of 1904, because I have never had any conversation with Mr. Conklin in any office except a legal conversation since the conversation in 1904.

Q. So that you are positive that he informed you that he had taken steps to revoke the powers of attorney previous to the time you saw him in 1904.

A. That seems to me to be so. I don't remember ever having any conversation with him of a personal character since then.

Q. Now, was the A. R. Conklin estate matter in your office at the time, unsettled—at the time of the death of Mr. Patrick Reddy?

A. I am inclined to think so.

Q. When you state that there was a serious disagreement between Mr. N. E. Conklin and Mr. Patrick Reddy, how long was that disagreement prior to the time of Mr. Patrick Reddy's death? [315]

A. Well, I would say somewhere along about a year.

Q. Sometime about a year?

A. Yes; I think so; I wouldn't want to be bound by any dates. I remember that they did have—it might have been longer. I think I could fix it—it was sometime—it was probably a year or so after the final decision, as I remember it—no, it might have been after Mr. Conklin's father's death—I don't remember the dates—the final decision in the Conk-

(Deposition of J. C. Campbell.)

lin-Broder case.

Q. You were one of the attorneys for Mr. Conklin in the Conklin-Broder case, were you?

A. No, I was not. I will explain that to you this way; I took some part in the trial of it. I came down and joined the firm, or we made the firm of Reddy, Campbell and Metson in October, 1889. At that time the case was pending; it was Mr. Reddy's case. I went up with Mr. Reddy to Inyo County—for him—and assisted at the trial of the case. That case went to the Supreme Court and was reversed, and then it was tried a second time in Mono County, at which time I took no part, and went to the Supreme Court and was affirmed. I had no lot or part in it. If my name appeared—I don't know that my name appeared in the record—it may have—but I had nothing whatever to do with it, except to assist Mr. Reddy in the trial of one of these old cases.

Q. Now, Mr. Campbell, as I remember your direct examination, you stated that you paid Mrs. Conklin \$2,750 for Mr. Benson.

A. Well, the check was made payable either to myself or the firm, and we divided it between the two.

Q. Those are the only payments that were ever made through your firm to Mrs. Conklin for Mr. Benson? A. Yes.

Q. That is for Mrs. Conklin? [316]

A. Yes, that is the only money that ever was paid to Mrs. Conklin through us for Benson, or for anybody else, that I know of, but there was some ten or twelve thousand dollars paid to Mrs. Reddy on

(Deposition of J. C. Campbell.)

this claim after that time.

Q. Could you tell us, Mr. Campbell, what was the full amount you received from Mr. Benson on this Monache deal for Mrs. Conklin and Mrs. Reddy?

A. I couldn't do it now, but I think I can tell you, because it must be in one of Mrs. Reddy's accounts to the Probate Court. I didn't say—I don't mean to myself, individually. The checks would come to Mrs. Reddy, I think most of the checks came to Mrs. Reddy; probably some came to me and some came to the firm—I suppose whoever telephoned about it. I don't remember that it came payable to me, but I know Mrs. Reddy accounted for some ten or twelve thousand dollars, or something like that. I think the amount of money paid by Benson that I have any knowledge of, I would say, in round numbers, was \$15,000.

Q. Of that amount Mrs. Conklin received only \$2,750?

A. Yes, sir; she refused to receive any more; that was the time when I was notified by Mr. Conklin when this money matter came up.

Q. When were you notified that Mr. Conklin would not receive any more money from Mr. Benson?

A. I don't remember.

Q. Who notified you?

A. I think it was Mr. Conklin, at the time he told me about this Washington business; that is my recollection.

Q. That is your recollection—

The WITNESS.—Now, wait a minute. Maybe I

(Deposition of J. C. Campbell.)

may be mistaken about how the notification came to me. It may be that [317] they notified Benson and Benson notified me, but my present recollection is that it was Mr. Conklin that told me.

Mr. DAVIDSON.—That will be all.

The WITNESS.—There is one thing that I forgot to state, that I want to state now. It was in some of the testimony which I read, which was taken, I think, in Idaho, that certain papers were sent up to the house of Mrs. Reddy, I believe, and representations were made that they came from me or from our office. If such was the fact, it was without any knowledge or direction from me, or any of the office that I can find out. I didn't know anything about any papers ever being sent up to Mrs. Reddy or Mrs. Conklin or anybody else to be signed, except those when I went with Mr. Holland Smith out to get Ned Reddy's acknowledgment.

Q. If any papers were sent to Mrs. Mollie Conklin and Mrs. Emily Reddy in connection with the deal for the Monache lands, they may have been sent by Mr. Bernard, may they not?

A. They may have been sent by Mr. Bernard, but I never sent them.

Q. Mr. Bernard was at that time employed in your office?

A. Oh, yes; he has been ever since he was a little bit of a boy, and he is here yet.

Mr. CAMPBELL.—I want to put in as a part of the deposition the copies, of course, as the originals were all burnt in the Clerk's office, the copies of the

(Deposition of J. C. Campbell.)

petition to the Court for Mrs. Reddy in relation to this matter.

The same is marked by the Notary, Defendants' Exhibit "B," and is attached to this deposition.

At this time Mr. Campbell produces and reads in evidence the following: [318]

"August 25, 1902.

Paid Mrs. Mary Smith \$100 for Notary fees as per agreement in re surrender and exchange Monache lands, Voucher No. 37—Vouchers filed in court and burned."

(The further taking of the depositions in this case was by consent adjourned until April 29, 1910, at 11 o'clock A. M. at the same place.) [319]

The witness J. C. CAMPBELL testified on redirect examination as follows:

The WITNESS.—Since we have been taking this testimony I have examined the record in the case of Mollie Conklin vs. Benson et al., in Modoc County; I also have been shown by counsel certain letters which passed between Mr. Conklin and myself and Mr. Benson and myself, which clear up in my mind and bring back to me particularly the transaction.

I never did represent Mollie Conklin in any of these contracts. I never did have any conference or agreement with Mr. Benson in relation to the sale of the Monache lands except what was had in the presence of Mrs. Reddy, the first time, and Mrs. Conklin and her son, as I have heretofore testified to. The contract which I understood they agreed upon in my office was, as I understand it, fully consummated at

(Deposition of J. C. Campbell.)

the last meeting there, which was after the explanation by Benson that the lands were within the Government reservation, and it was the next thing to an impossibility to sell them by reason of that, for the reason of the fact that there was no particular market value for lands within these reservations. The Government assumed control of them in various ways, the details of which I do not now remember, but the ultimate agreement between the parties was that they would deed the lands to the Government of the United States; that there were to be powers of attorney executed to select the lands in lieu of the Monache lands, but there never was any agreement in my presence that the title was to pass out of either the Reddy estate or Mrs. Conklin until those lands were paid for. I never knew until during the taking of this deposition that there had been a power of attorney [320] executed by Mrs. Reddy or Ed. Reddy giving to anyone the power to convey those lands. My understanding of the agreement was that when the lands came—when the titles were approved, they would be approved in the name of the parties who made the selections, that is, the Reddy estate, or Mrs. Reddy and Ed. Reddy and Mrs. Conklin. When those papers were approved, then they were to make a conveyance of the properties and get their money at the Anglo-Californian Bank.

There was some talk with Benson that he didn't have the money; that he would probably have to sell, or something of that kind, but the title was never to go out of these people until they were paid for. I notice in my testimony here that there was something

(Deposition of J. C. Campbell.)

said about a power of attorney to sell; that must be a mistake; if I stated that, I was mistaken about it. I never at that time had seen, or if I had seen I had forgotten the correspondence which passed between Mr. Conklin and myself. I am confident about the powers of attorney, because I know if I had known anything about a power of attorney, I never would have permitted Mrs. Reddy, as executrix, or Ned Reddy as executor to execute any power of attorney which was absolutely, in my opinion, without any authority, because an executor or executrix have no power to delegate their trust to any person.

Mr. Cobban's name, nor any person's else name was ever mentioned, that he should receive a power of attorney to convey that land to anybody.

I had a general understanding, of course, that Benson was going to sell the land, but nothing about the title going out of these people until the money was paid to them through the Anglo-Californian Bank. That was the agreement. I never did [321] send any paper of any kind or character, nor did I know of any paper of any kind or character being sent to either Mrs. Reddy's house or the Savoy Hotel. If that was done, it was done without my knowledge. All papers that I knew anything about, after they were prepared—and I didn't read them—were the papers that were taken—I had my carriage—when I took Holland Smith out to Mr. Ned Reddy and he received them. They were in a big bundle.

All the money that was paid to me by Mr. Benson I understood was in advance on the contract. The

(Deposition of J. C. Campbell.)

\$5,500—when Mrs. Reddy came down and wanted some money and he sent me over the check. How the \$500.00 came into my possession, I am not prepared to say, but I have here a list which was furnished to the Reddy estate, which is incorrect in relation to one item. I assume the balance of it is correct; and I now state that the last sum of money—and I am stating it from this statement—that was paid, was paid on November 4, 1901, and it was \$500.

There is another item in this letter which is incorrect, because it was a matter which was involved in some Los Angeles matters not connected with the Reddy estate at all, which is June 4, 1903, of a thousand dollars paid to me, but it was not paid for the Reddy estate. Mr. Benson knows that and I know it.

The way this money was paid: Mrs. Reddy had no particular money, and she would come down to the office and want to know if I couldn't get some money out of Benson, and I would generally, and almost every time, or a great many times through the phone call Mr. Benson, and ask him if he couldn't give Mrs. Reddy some money, and my recollection is that the universal statement I got from him was that the titles had not as yet [322] been approved, but that he would give Mrs. Reddy some money, and he did send over some money. I don't understand how these items come to be in the form in which they are, because I have no recollection of that. The first item that is here in the account rendered to Mr. Oatman, who afterwards became a member of the firm,

(Deposition of J. C. Campbell.)

but who was at all time a clerk in the office and has charge of the probate matters, is as follows:

“Moneys expended by John A. Benson in the matter of certain lands situated in Tulare and Inyo Counties, California, known as the ‘Monache Meadows’—

To Washington attorneys account of

listing lands\$250.

Taxes..... 305.45

Holland Smith, Notary..... 100.00”

Now, I paid that to Holland Smith. I may have gotten the money from Benson for that purpose.

Then, it appears that there was something about a lease, which I have a vague and indirect idea about, but I can’t remember what that is, whereby he credits the Reddy estate for \$500. There is something about a lease of the property or something of the kind, which leaves a balance of \$155.44. Now, the amounts in checks sent to me for Mrs. Reddy—and I am not positive now whether these amounts, any of them, involve the second \$500.00, or not. I don’t believe they involve the first \$5,000.00, because my recollection is that that came in one check; nor am I able to determine now why the amounts, as I said before, are as they are.

The first amount appears to be September 25, 1900, \$608. Now, September 25, 1900, \$608. Why it is two checks, or why that is, I am not able to determine. [323] October 4th, 1900, is \$200.00; the 12th, \$18.20; the 19th, \$200.00. Then that is all the money that appears to have been paid in the year 1900. Then,

(Deposition of J. C. Campbell.)

January 14, 1901, \$500.00; March 9, 1901, \$1,000.00; March 16, 1901, \$1,432.00; March 29, \$1,000.00; June 18, \$1,000.00; June 29, \$1,000.00; July 5, '01, \$500.00; August 31st of the same year, \$250.00; September 4, \$500.00; September 27, \$1,500.00; November 4, \$500.00. Now, I have no independent recollection of that, but when we came to make up the account. (To Mr. Davidson.) Do you want to look at that? (Hands to Mr. Davidson.) This last item there when we came to make up the account, Mr. Oatman got that.

When these parties left the office, or shortly after that, I understood they were going out together, and that the deeds to the Government of the United States and the papers, that is, that the papers, the only papers that had been the subject of any conversation were to be prepared. Mr. Milton Bernard was there; Holland Smith was there; Mr. Benson was there and Mr. Conklin was there, and they all went out together.

I did say that, in my opinion, Mrs. Reddy nor Ned Reddy could sign nothing unless they got the order of the Probate Court. After that we went to the Probate Court and got [324] an order for Mrs. Reddy which has been introduced in evidence; it was to convey the lands to the Government of the United States and accept lands in lieu thereof, but I had never had any idea where the lands were going to be situated, the lieu lands that were going to be accepted in lieu of the Monache lands, nor anything of that kind. I did get that order and I did notify

(Deposition of J. C. Campbell.)

Benson. I did, however, learn this morning when I went to look at the probate proceedings with Mr. Oatman, that sometime since Mr. Cobban or Mr. Cobban's lawyer, had informed him of these powers of attorney, and that there was some litigation now pending against the Reddy estate in relation to the Monache lands, but Mr. Conklin never told me of a power of attorney to convey these selected lands. Mrs. Reddy never told me, and Mrs. Mollie Conklin never told me, and I never knew anything about that until you produced that one here; and Mr. Conklin, if I recollect correctly, when he spoke about the revocation of powers of attorney in Washington, didn't tell me that they were powers of attorney to convey, but I understood that they were the powers of attorney to select lieu lands and I was very much surprised at the production of that power of attorney here, so much so, that I have had a conference with Mr. Metson, and if he follows my advice, we will see what we can do towards getting those Reddy estate lands in some shape where the Reddy estate can get them.

I think that is all I can remember now.

Mr. DAVIDSON.—Q. Mr. Campbell, as I understood, you did not understand that any powers of attorney to convey the selected land were being discussed at the time of the consummation of the deal?

A. Absolutely not. I am positive there was no discussion of any powers of attorney to pass the title out of the hands of [325] the Reddy estate or Mrs. Conklin until they got their money.

(Deposition of J. C. Campbell.)

Q. You understood they were simply surrendering the base lands and that they were to retain the title to the selected lands until they were paid for?

A. That was the contract absolutely.

Q. Mr. Campbell when all these payments were made as testified by you on account of moneys due the Reddy estate did you understand that any of the Monache land selections had been sold?

A. On the contrary; I understood that Mr. Benson was advancing the money on the contract. The contract was that when the titles were approved the money was to be paid. You will see by the letter which was written me in December, I think, 1901, that it was there stated that none of the approvals had been made, and at the time that I had my correspondence with Mr. Conklin, wherein I said, "We can take this matter away from Benson," it was with the thorough understanding that the title remained in them and that Benson having failed to come through with the money, that all they had to do was to sell to some person else.

Q. And refuse to deliver title to any one to whom he might sell selected lands, if he sold to someone else?

A. That was my understanding. Furthermore, Mr. Davidson, there was not anything, I am confident, said about any escrow. The understanding was that when the lands were approved, they were to take the conveyances to the Anglo-Californian Bank and get their money. There, I suppose, is where the question of escrow came. Neither was there anything said about Mr. Metson or myself preparing the deeds;

(Deposition of J. C. Campbell.)

whoever testified to that, in my opinion, is mistaken about that. The deeds were to be prepared to the Government of the United States. [326]

Q. Now, Mr. Campbell, if the facts in this case show that all of the lands involved in this case, the selected lands, have been transferred to Mr. R. M. Cobban, by delivering to him the applications of Mollie Conklin and the Reddys to select abstracts of the Government, Abstracts of Title showing the conveyance of Monache lands to the United States and pretended powers of attorney to sell the selected lands *prior previous* to the 23d of July, 1901, did you have any knowledge of such transactions?

A. No, sir.

Q. If it is shown that all the lands involved in this case were attempted to be sold, the selected lands, by Mr. Benson, to the defendant R. M. Cobban on or previous to the 23d day of July, 1901, were you ever informed of such sale or attempted sale?

A. No, I never was informed of such sale or attempted sale. I did know that Cobban had—through the Probate Court, through our probate people, I think since the fire, since 1906—I don't remember—maybe I did know that Cobban or somebody else was advancing some claims to these contracts, but I never did know that the lands had been conveyed by a power of attorney, or that any power of attorney to convey had been executed by anybody until you showed me that power of attorney here.

Q. Now, at the time of the consummation of the deal for the surrender of the Monache lands, did Mr.

(Deposition of J. C. Campbell.)

Benson request the owners of the lands to furnish him at the time any powers of attorney to sell the selected lands?

A. No, sir, not that I remember of; but I am satisfied that it wasn't mentioned, because I am satisfied that I wouldn't have consented to that, because they couldn't give any powers of attorney—my people—
[327]

Q. And you would not have consented for your clients the Reddys, to turn this land over to Benson absolutely until they were paid for the land?

A. No, and Benson didn't ask it.

Q. Now, you heard the testimony of Mr. Benson. Mr. Benson, as I remember it, testified that after the deeds to the Government surrendering the Monache lands were delivered, that he thereafter procured from your office the powers of attorney to make selections of land in lieu of the Monache lands, and powers of attorney to make sales of the lands selected from time to time as they were required in his business to dispose of the lands. Is that true?

A. Not to my knowledge. If he got any such powers of attorney or any such powers of attorney ever passed through my office, it was without my knowledge or without my consent, or without anybody's consent.

Mr. CAMPBELL.—(To Mr. Benson.) Do you want to ask any questions, Mr. Benson?

Mr. BENSON.—I think the questions I was going to ask have been covered by what you have stated. I don't want to make any statement.

Mr. CAMPBELL.—As I understand it, after Mr.

(Deposition of J. C. Campbell.)

Conklin came back from Washington, after some patents had been issued in the name of the Reddy estate, as I understood it that was the time Mr. Conklin appeared in Judge Coffey's court as a friend of the Court, not representing any of the parties, and asked Judge Coffey, after having served notice, as I remember, on our office—asked Judge Coffey to vacate this order which permitted Mrs. Reddy and Ned Reddy to convey lands to the United States, on the ground that they couldn't convey lands [328] outside of the State of California, or something of that kind, and we didn't make any objection to it after we found out exactly the condition. Judge Coffey said he had no jurisdiction out of the State, and we all knew that.

Mr. Conklin and myself having got off wrong about a misunderstanding of this thing—if he had ever told me there was a power of attorney in the matter, I would have understood it and we would never have had any great amount of controversy; but we didn't deny the right of the Judge to cancel this so-called Probate Order.

Mr. DAVIDSON.—I understand that Mr. Benson wants to ask a question.

Mr. BENSON.—(To Mr. Campbell.) Q. Did you or did you not, after the validity of these titles, both from the Reddy estate and from the Conklins, became in controversy, know of any proposition on my part, or any communication made to you, or Mr. Conklin wherein I offered, if the Reddy estate would make a direct deed as to the lands approved joining with the Conklins in such deed that I would pay them a sum sufficient to make up all the amounts that were due

(Deposition of J. C. Campbell.)

on the lands approved by the United States?

A. Well, in substance, I think that was talked over. I know Mr. Conklin and his mother and his sister—I don't know whether you were present or not—we had a conference about that; but in substance I know you have said that any time that the titles would be perfected that you would pay the amount of the money. It always was my understanding from you that the reason that the money had not been forthcoming was that Mr. Conklin in Washington had prevented the approval of the titles, or something of that kind. I know you and Mr. Metson have had frequent conferences about the getting of the title of the Reddy estate by sale, or otherwise. That is where I think now you [329] suggested—you correct me if I am wrong (to Mr. Conklin), is not that where Cobban came in and made some objection to the sale, and didn't we file a petition on the part of the Reddy estate to sell the lands, and is not that the first time Mr. Cobban appeared by some attorney—

Mr. CONKLIN.—Mr. Cushing.

Mr. CAMPBELL.—Yes, Mr. Cushing; that is the first time I ever knew of Mr. Cobban—when was that?

Mr. CONKLIN.—There was a stipulation entered into by Mr. Cobban and Mr. Oatman stating that these powers of attorney when received were in blank; if I knew the date of that stipulation—

Mr. CAMPBELL.—What I want to know is, was it since the fire? It must have been.

Mr. CONKLIN.—No, I think it was before the

(Deposition of J. C. Campbell.)

fire. I got a certified copy before the fire. I know the records were burned in the fire.

Mr. CAMPBELL.—That the powers of attorney were in blank?

Mr. CONKLIN.—Yes.

Mr. CAMPBELL.—That is something I knew nothing about.

Mr. CONKLIN.—Mr. Cobban's attorney stipulated to that effect.

Mr. BENSON.—Q. If such an offer was made, did not both parties owning these lands refuse to consider it as a part and only agree to treat it as a whole; that is to say, the full price must be paid for all the lands before any deeds or ratifications of transfers would be delivered for any portion of it, notwithstanding the money that had been paid or was to be paid.

Mr. CAMPBELL.—A. I know you didn't agree on some details, but I am not prepared to swear about that. I didn't know what the trouble between you and Mr. Conklin was, but I [330] thought the trouble between you and Mr. Metson was in relation to interest. Mr. Metson demanded interest on the payments that had not been made, and was not willing to allow any interest on payments that had been made the Reddy estate. I think that was it, but the details of that I don't remember much about. I do remember that after the fire, and I think it was before this matter, that Mrs. Conklin and her son and daughter were in my office, I think, with Mr. Sam Leake, and there was some talk about you carrying out the contract there, and then I think Mrs. Coleman and Mr. Metson had some conversation with you;

(Deposition of J. C. Campbell.)

but they didn't go through, and just what the details of it was I am not able to say. I know they didn't compromise or didn't settle.

Mr. DAVIDSON.—That is all.

Mr. BENSON.—I would like to ask one more question, but I wouldn't like to do it without consultation.

Mr. DAVIDSON.—Go ahead and consult.

Mr. CAMPBELL.—I will state this: That in the conference between yourself and Mr. Metson and any person else, talking about the difficulties between yourself and the Reddy estate, I have always said, and I say now, that you should get credit for the amount of money which you paid to the Conklins and the amount of money you paid to the Reddy estate.

Mr. BENSON.—The only statement I wish to make is this, that according to the contention of both parties I have yet received no perfect title to any of the selected lands, and without recapitulating, I wish to say that it is my understanding that the questions that I propounded to Mr. Campbell just now should be answered in the affirmative, and I would like to have it considered in making this statement that the [331] affirmative be true in relation thereto, to the best of my understanding in the matter.

Mr. DAVIDSON.—Q. (To Mr. Benson.) So far as you have testified to?

Mr. BENSON.—A. Yes, so far as I have testified to.

Mr. CAMPBELL.—I want to show by Mr. Metson that he never sent any papers up to Mrs. Reddy. The fact is that Mr. Metson left for Nome before Mr.

(Deposition of J. C. Campbell.)

Reddy's death, and he didn't get back here until November of that year, 1900, and he was only here a very short time, and then went from here to Washington and went there for the session.

Mr. DAVIDSON.—As far as that is concerned, we will admit that Mr. Metson being in Nome, and was absent during the period you state.

Mr. CAMPBELL.—Then you will admit he didn't send—

Mr. DAVIDSON.—Yes, we are willing to admit that Mr. W. H. Metson did not send any papers to Mrs. Reddy or Mrs. Conklin relating to the transfer or any transfer or relinquishment of the Monache lands, he being absent from the State of California during the time that such papers purport to have been executed.

Mr. CAMPBELL.—I can't get Bernard. I will rest on what I have got. I won't put him on the stand.

Mr. DAVIDSON.—All right; that will complete the taking here.

Mr. CAMPBELL.—I will say that if you will get the Court to take my testimony orally up at Idaho, I will come.

Mr. DAVIDSON.—I would prefer it.

Mr. CAMPBELL.—I will write to Mr. Frazer to-day about that and I will also say that I told Mr. Bolton that in the case at Modoc when this deposition of mine was taken, none of the letters were shown to me; and I told Mr. Bolton that if he [332] wanted me up there, and it became necessary, that I would go. I received no telegram. But had they

(Deposition of J. C. Campbell.)

shown me those letters and these things I would have testified to those matters just as I did here, and I did substantially, but there are one or two things here that have been cleared up in my mind, as far as that is concerned.

J. C. CAMPBELL.

Subscribed and sworn to before me this 3d day of June, 1910.

[Seal]

FLORA HALL,

Notary Public in and for the City and County of
San Francisco, State of California. [333]

[Deposition of James H. Lavenson, for Defendants.]

The witness, JAMES H. LAVENSON, being duly sworn, testified as follows:

Direct Examination.

Mr. CAMPBELL.—Q. How old are you?

A. 35 years.

Q. What is your business?

A. Secretary for John A. Benson.

Q. How long have you been connected with John A. Benson in business? A. For the past 19 years.

Q. Were you in the office of John A. Benson at the time of this so-called Monache deal? A. I was.

Q. Did you know generally of it?

A. Yes, I knew generally of it.

Q. Do you know Mr. Norman E. Conklin?

A. I do.

Q. During the time that this matter was in the office of John A. Benson, did you see Mr. Conklin there? A. I did.

Q. Will you kindly state how many times?

(Deposition of James H. Lavenson.)

A. To the best of my recollection I saw him there two different times.

Q. Do you know what they were doing?

A. I know that Mr. Conklin brought in quite a number of papers, some of them certificates of purchase, and some of them were papers involved in the proceedings connected with the Monache lands, and there was also a large map upon which all of these Monache lands were delineated by certain colors.
[334]

Q. Did you have any conversation with Mr. Conklin yourself? A. Not that I remember,

Q. Did you know in his lifetime, Holland Smith, the notary public? A. I did; yes, sir.

Q. Did you at any time go to Holland Smith's office for the purpose of getting any papers?

A. Yes.

Q. Did you obtain from the office of Holland Smith any papers?

A. I did; I obtained a large roll of papers.

Q. Did you examine them? A. I did.

Q. Do you know what they were?

A. To the best of my recollection they were deeds to the United States, conveying these Monache lands, and while there may have been other papers, my recollection points only to the deeds.

Q. Do you remember the date of that—I mean in what year, or do you just remember generally?

A. I know it was in the year 1900, but as to the specific date, I couldn't state.

(Deposition of James H. Lavenson.)

Cross-examination.

(By Mr. DAVIDSON.)

Q. Do you remember about the dates when you saw Mr. Norman E. Conklin in the office of John A. Benson?

A. No, I couldn't state any more than it was in the year 1900.

Q. Was that before or after the time that you secured the deeds from Mr. Holland Smith that you have testified to? [335]

A. I couldn't place it.

Q. Mr. Lavenson, are you acquainted with the complainant, Mollie Conklin?

A. Not that I know of.

Q. Do you have any recollection of having seen her at any time? A. No specific recollection.

Q. Do you say now to the best of your recollection you have never seen Mollie Conklin?

A. Well, I wouldn't say to the best of my recollection I have not seen her, but I have no recollection of having seen her.

Q. Mr. Lavenson, would you say now that there were any other papers in the roll that you secured from Mr. Holland Smith, the notary, except the deeds for the Monache lands?

A. My specific recollection is of the deeds; but I believe there were also other papers.

Q. What other papers, if you know?

A. Well, my recollection points only to the deeds, so I couldn't state the nature of the other papers.

Q. Did you see Mollie Conklin sign any of the

(Deposition of James H. Lavenson.)

papers which you secured at the office of Holland Smith?

A. I have no recollection of having done so.

Mr. DAVIDSON.—That is all.

Mr. BENSON.—Q. Did you assist, or were you called in consultation in reference to the form of deed that was to be given to the United States, conveying these Monache lands?

A. I have no specific recollection; I know, as a general rule, I was consulted about those things, but I have no specific recollection in this case.

Q. Was it the general custom of the office in dealing with Forest Reserves lands to buy the title outright? [336]

Mr. DAVIDSON.—We object to that as irrelevant, immaterial and incompetent, and not the proper way of proving the custom; and for the further reason that the custom of the office of John A. Benson would not be binding upon the complainants in this case, or either of them, and would not tend to prove any of the material issues in this case.

A. It was never the custom to buy the lands outright.

Mr. BENSON.—That is all.

JAMES H. LAVENSON.

Subscribed and sworn to before me this 28th day of May, 1910.

[Seal]

FLORA HALL,

Notary Public in and for the City and County of
San Francisco, State of California.

(At this time the further taking of the depositions of the witnesses was continued until Monday, May 2, at 10:30 A. M. at the same place.) [337]

[Deposition of Clara E. Glover, for Defendants.]

The witness, CLARA E. GLOVER, being first duly sworn, testified as follows:

Direct Examination.

Mr. CAMPBELL.—Q. Will you kindly state your name? A. Clara E. Glover.

Q. You are over 21 years old, of course?

A. Yes, I am over 21.

Q. You know John A. Benson? A. Yes, sir.

Q. How long have you been engaged with him in business?

A. Well, it is going on nearly thirty years.

Q. Did you know of this Monache business?

A. Yes, sir.

Q. In what capacity were you engaged in the Benson office at the time of the Monache negotiations?

A. Clerk.

Q. Do you know Mr. Norman E. Conklin?

A. Well, I have seen him; yes, I know him.

Q. During the time the negotiations about this land, the Monache land, did you see Mr. Norman E. Conklin in the office of John A. Benson?

A. Yes, sir.

Q. About how often?

A. Well, quite frequently for, I would say, ten days or two weeks.

Q. Do you know what they were doing?

A. Well, I couldn't say what Mr. Benson and he

(Deposition of Clara E. Glover.)

were doing, but I, myself, I worked with Mr. Conklin some.

Q. And what did you do?

A. We were checking maps; he had a large tracting, and I [338] had little six-inch plats that we were describing the land on.

Q. Describing the Monache land?

A. Yes, the Monache land.

Q. For what purpose?

A. Well, as I understood it, Mr. Benson was to buy it, or had bought it at the time.

Q. Had bought the Monache lands?

A. The Monache lands, yes, sir.

Q. Did you understand from Mr. Conklin any of the terms or conditions of the sale or purchase?

A. No, I did not.

Q. Do you know whether or not there were any deeds prepared in that office at that time?

A. Yes.

Q. What were the deeds?

A. Well, deeds to the United States; in fact, I don't know but what he and I worked on that because it was deeded in 40's, 80's and 240 acre tracts. That is one of the things I was working on.

Q. Were there any powers of attorney to select land in lieu of the Monache lands? A. Yes.

Q. Were there any other powers of attorney made out there at that time?

A. I couldn't say as to that positively.

Q. But what you were working at was the deeds to the United States and powers of attorney to select

(Deposition of Clara E. Glover.)

land in lieu of the Monache lands? A. Yes, sir.

Q. Do you know what was done with those deeds and powers of attorney to select lands? [339]

A. Well, as I understood, they were to be sent back to the parties, but as far as knowing what was done with them—

Q. You don't know?

A. I don't know, no, sir.

Cross-examination.

(Mr. DAVIDSON.)

Q. Miss Glover, you say you saw Mr. N. E. Conklin for a period of about ten days or two weeks?

A. Yes, sir.

Q. During that period of time, how often was he in Mr. Benson's office?

A. Well, there was a time when I think he was there nearly every day.

Q. For about how many days?

A. Oh, I couldn't say; that was a long time ago.

Q. Are you positive that he was in the office of Mr. John A. Benson about that time oftener than twice? A. During that time?

Q. Yes. A. Oh, yes, indeed; yes, sir.

Q. Are you positive that Mr. Conklin worked with you in the preparation of any deeds to the Monache lands?

A. Well, on the land that was to be described in the deeds.

Q. Then, what you and Mr. Conklin were doing was simply checking up the description of the lands as shown in the maps? A. Yes.

(Deposition of Clara E. Glover.)

Q. He had no part in the preparation of any deeds of the Monache lands, to your knowledge?

A. Not that I know of; but he knew that we were working on them.

Q. Did he assist in the preparation of any powers of attorney to select any lands in lieu of the Monache lands, to [340] your knowledge?

A. Not that I know of.

Q. Had you ever known Mr. Conklin previous to that time? A. I never had, no.

Q. Are you acquainted with Mollie Conklin?

A. I am not.

Q. Did you ever see Mollie Conklin?

A. Well, I always understood that she came in one day with him, in the office; I couldn't say that it was Mrs. Conklin, but a lady dressed in mourning came in with him—a card was sent in—I know it was Mr. Conklin himself, and Mr. Benson was very busy at the time. She was sitting in the room with me, but didn't speak to me. She was dressed in heavy mourning.

Q. Miss Glover, was that before or after the time that you and Mr. Conklin were working, checking up these descriptions?

A. Well, I think it was about that time, but I couldn't say as to that. I would suppose it was that time.

Q. If the person you saw at that time was not Mollie Conklin did you ever, to your knowledge, see Mollie Conklin? A. No.

Q. Did Mollie Conklin execute any instruments

(Deposition of Clara E. Glover.)

relating to the Monache lands or any lands selected in lieu of the Monache lands in your presence, or sign any papers?

A. Well, I don't think so; I don't know; I don't remember.

Q. Now, Miss Glover, about when was it that you saw this lady with Mr. Conklin whom you thought was Mollie Conklin, the lady dressed in mourning?

A. Well, I would say that it was at the time that the deeds and papers were being prepared. [341]

Q. Well, now can you fix for us about the time that these papers were being prepared, when you saw Mr. Conklin frequently?

A. Well, I couldn't say, only by hearing it talked over here, that it was in September, 1900.

Q. Then, to the best of your recollection, this took place in September, 1900? A. I would say so.

Q. Now, Miss Glover, were you present in Mr. Benson's office when Mr. Conklin first came in with this map you have testified in reference to?

A. I have no recollection of the first time.

Q. Do you know when he brought the map into Mr. Benson's office? A. I couldn't say when; no.

Q. Were you there when Mr. Conklin delivered the maps and papers relating to the Monache lands, do you know?

A. Well, I remember them so well. I remember seeing them in his hands and I remember looking them over with him. There was a big package of papers.

Q. Would you say that was the first time, the first

(Deposition of Clara E. Glover.)

time they were brought to the office, the time you say you remember so distinctly?

A. I couldn't say as to that.

Q. You couldn't say; but you are positive that Mr. Conklin was in the office frequently during the period of about ten days or two weeks?

A. Yes, sir.

Q. Was that from the time you first saw the map in Mr. Benson's office? A. Yes. [342]

Q. Dating from the time the map was brought into the office by Mr. Conklin? A. Yes, sir.

Q. Miss Glover, are you positive that the deeds were prepared at the time the maps were brought in there, the time that you and Mr. Conklin, as you say, were checking up the descriptions?

A. I couldn't be positive, but I think so.

Q. Now, then, if the deeds were not prepared at the time that you and Mr. Conklin were checking up the descriptions, then Mr. Conklin would not be present, according to your recollection, at the time the deeds were prepared?

A. Well, I couldn't say as to that.

Q. Was Mr. Conklin in the office more than during this one period, that is, at any regular intervals?

A. Oh, he was there frequently, Mr. Conklin was, but, of course, I remember that one time particularly; of course, he was there off and on.

Q. Was he there frequently after you had checked up these descriptions?

A. I couldn't say as to that.

Q. Would you say he was there at any time within

(Deposition of Clara E. Glover.)

a year after you had compared these descriptions?

A. I would think so, but I couldn't be positive of that.

Q. Was Mr. Conklin there during the preparation of the deeds at any time?

A. Well, I couldn't say as to that, because they were being prepared—they must have been—while he and I were checking over the lands.

Q. Well, you state that simply because—you presume the deeds were being prepared, because you were checking up the descriptions? [343]

A. Yes, sir.

Q. You have no independent recollection of the preparation of the deeds? A. No.

Q. Miss Glover, I hand you a paper marked Complainant's Exhibit "W" for identification, and ask you to examine that paper, and state whether or not you know whose signature that is to that paper.

A. Well, it seems to be Mr. Benson's signature.

Q. Did you prepare that receipt, if you remember?

A. No, I did not.

Q. Was that a receipt, if you know, prepared in the office of Mr. Benson, at the time that Mr. Conklin brought in the papers, maps and patents?

A. Well, I couldn't say as to that.

Mr. DAVIDSON.—We offer in evidence the paper marked Complainant's Exhibit "W" for identification.

Mr. CAMPBELL.—Mr. Campbell has no objection.

(Deposition of Clara E. Glover.)

Mr. BENSON.—No objection here.

(The paper is in words and figures as follows:)

[Complainant's Exhibit "W."]

(Letter-head John A. Benson, 507 Montgomery Street, San Francisco, Cal.)

“July 11th, 1900.

RECEIVED OF N. E. CONKLIN Swamp Land Patents aggregating 9280. acres, covering lands in what is known as the ‘Menacha Meadows,’ in Tps. 19, 20 and 21 S., Rs. 34 and 35 E., M. D. M., and also received map covering same tract. I receive these Patents for the purpose of examination and comparison to ascertain the tracts for which Patents are not on hand, and also to ascertain what portion, if any, of said lands are not listed and patented by the United States to the State of California.

(Signed) JOHN A. BENSON.” [344]

Mr. DAVIDSON.—Q. Miss Glover, at the time that you say you saw a lady in mourning in the office of John A. Benson with Mr. Norman E. Conklin, were any papers signed at that time by the lady?

A. I couldn't say; she was inside with Mr. Benson.

Q. You did not see her sign any papers at that time?

A. Not that I remember of now; she may have signed papers and I not remember it.

Q. Was this during the time that you were checking up the descriptions of the land with Mr. Conklin?

A. I would say it was about that time, but I couldn't be positive of that.

(Deposition of Clara E. Glover.)

Mr. DAVIDSON.—That is all.

Mr. CAMPBELL.—Q. Did you know Mrs. Reddy, Mrs. Emily Reddy?

A. Was that Patrick Reddy's wife?

Q. Yes. A. Yes, I knew Mrs. Reddy.

Q. Was this lady dressed in black, was that Mrs. Reddy? A. I don't think so.

Q. Mrs. Reddy was rather large and had very white hair.

A. Well, I had known her for quite a time, and I think if it had been she, she would have spoken to me.

CLARA E. GLOVER.

Subscribed and sworn to before me this 28th day of May, 1910.

[Seal]

FLORA HALL,
Notary Public in and for the City and County of San Francisco, State of California. [345]

Friday morning, April 29, 1910, 11 o'clock A. M.

[Deposition of John A. Benson, for Defendants.]

JOHN A. BENSON, being first duly sworn, testified as follows:

Direct Examination.

Mr. CAMPBELL.—Q. Kindly state your name.

A. John A. Benson.

Q. Where do you live? A. San Francisco.

Q. How long have you lived in San Francisco?

A. Twenty-five years or more.

Q. Did you know in his lifetime, Patrick Reddy?

A. I did.

(Deposition of John A. Benson.)

Q. What, if any, relations existed between you and Patrick up to the time of his death?

A. Attorney and client.

Q. How long had Patrick Reddy been your attorney prior to his death?

A. I should say fifteen years or more.

Q. Were you cognizant of the formation of the firm of Reddy, Campbell & Metson? A. I was.

Q. Will you kindly state whether Mr. Reddy was your attorney prior to the formation of that firm?

A. He was. I remember that very distinctly.

Q. Do you know Mrs. Mollie Conklin?

A. I do.

Q. Do you know her son, N. E. Conklin?

A. I do.

Q. Did you know in her lifetime, Emily M. Reddy?

A. I did. [346]

Q. Did you know Mr. Edward Reddy?

A. I did.

Q. Did you know a certain tract of land, a portion of which is the subject of this controversy, called the Monache Tract, situate in (to Mr. Davidson) it is in Inyo and Tulare counties, is it not, Mr. Davidson?

Mr. DAVIDSON.—Yes.

The WITNESS.—Yes.

Mr. CAMPBELL.—Q. Did you have any negotiations, contracts or agreements with Patrick Reddy in relation to that land prior to his death?

Mr. DAVIDSON.—We object to that as incompe-

(Deposition of John A. Benson.)

tent, irrelevant and immaterial and not tending to prove any of the issues in this case and that it is not binding upon the complainant, Mollie Conklin.

Mr. CAMPBELL.—The purpose of the testimony is to show the negotiations which led up to the agreement between Mrs. Reddy, Edward Reddy and Mrs. Mollie Conklin.

A. I had quite a number of conferences with Mr. Reddy relating to the subject.

Q. Do you remember the last conference you had prior to Mr. Reddy's death?

A. Only in a general way.

Q. Do you remember the last conference you had with him at his house on Pacific Avenue?

A. I do, yes.

Q. Was Mrs. Emily M. Reddy present at that conference? A. Yes, sir.

Q. Now, will you kindly state what took place between you and Mr. Patrick Reddy at that time in relation to the Monache lands? [347]

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, and not tending to prove any of the issues in this case, and for the reason that any transactions between the witness and Patrick Reddy would not be binding upon the complainant, Mollie Conklin.

Mr. CAMPBELL.—It is to show what led up to the final conference between the heirs of Patrick Reddy and Mr. Benson.

Q. Kindly state.

A. He was anxious to dispose of the Monache lands

(Deposition of John A. Benson.)

and knew of the Forest Reserve Act, and wanted to make some arrangement to have the lands put in shape so that they could be transferred, and he stated the price that he wanted those lands to bring, and I told him I would try my best in view of our past relations, to get that price for him, but I couldn't at that time.

Q. What was that price?

A. \$4 an acre; but I could come very near it.

Q. Was there anything said between you and Mr. Patrick Reddy about that time about reducing any agreement between yourself and Mr. Reddy to writing?

Mr. DAVIDSON.—The same objection as to the last question.

Mr. CAMPBELL.—The same purpose.

A. Well, he said that as soon as we could agree on the price he wanted to see me again and see if we couldn't enter into a full contract.

Q. Was there anything said about when he got able to come down to the office?

A. I don't remember whether he was to come down to the office or whether I was to go back there and see him again. He wanted to have another meeting shortly in relation to the matter.

Q. Well, was that the last conference you had with him prior to his death? [348]

A. It was. I left the State then, if I remember correctly, and didn't see him again during his lifetime.

Q. It is a fact, is it not, that Mr. Reddy died quite

(Deposition of John A. Benson.)

suddenly? A. I understood so.

Q. Now, then, when did you next have anything to do in relation to these Monache lands?

A. My recollection is that some time in the summer of 1900, you called me up on the telephone and wanted to know what could be done in relation to them, and said Mrs. Reddy wanted to realize on them, and wanted me to come up to the office and consult with you.

Q. Did you come? A. I did.

Q. Who did you meet there the first time you came?

A. Why, I think yourself and Mrs. Reddy and I think Mr. Metson was in and out. I am not sure about that, because I didn't talk with him.

Q. What I want to know is, whether or *not* at the first conference Mrs. Mollie Conklin or Mr. N. E. Conklin was present? A. I think not.

Q. Well, was there anything accomplished at the time of the first conference, and if so, what?

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, and not tending to prove any material issues in this case, and not binding upon the complainant, Mollie Conklin.

Mr. CAMPBELL.—Very well; proceed, Mr. Benson.

A. There was an arrangement made, and there was an understanding had that Mrs. Conklin would be sent for, when a meeting was to be had, and the matter was to be further discussed.

Q. Who had that understanding? Who said any-

(Deposition of John A. Benson.)

thing about that? [349]

A. Well, I don't know as anybody said anything about it, but I knew the condition of the title of the land, she had a half interest in it, and any transaction couldn't be completed without her being consulted, for the full interest.

Q. Did you have a second meeting? A. We did.

Q. Well, who were present at that second meeting?

A. Mrs. Reddy, Mrs. Conklin, yourself, myself and I think another lady, some relative; I don't remember her name.

Q. Was N. E. Conklin there at that second meeting?

A. I think not. My recollection is he was not there until the third meeting. He may have been. The matters were not fully discussed to the best of my recollection, at that time.

Q. Well, what is your recollection of what took place at the second meeting?

A. Why, I think the arrangements were made to meet again in a few days when they all could be present and enter into the subject fully.

Q. Whom do you mean by all?

A. I think Mrs. Conklin said she wanted her son present; that is my recollection. I may have it mixed up.

Q. What did she say about her son being present, for what purpose?

A. Well, I have already testified on this subject and my mind is a little hazy as to the two meetings; that is all.

(Deposition of John A. Benson.)

Q. Well, do you remember whether she said anything about her son, wanting her son to be present?

A. I think she did; that is my recollection.

Q. What is your recollection as to what she said?

A. She said before doing anything, she would like to have him present. [350]

Q. Well, then, was there anything planned, according to your recollection, at this second meeting?

A. I don't think there was, only a general discussion; the ways and means were all to be discussed fully with him, as I understood it. She said she didn't understand the matter fully and wanted me to discuss the whole matter.

Q. Was there a third meeting then?

A. There was; that is, if I am correct about the second and don't get the two segregated in my mind; it is a long time ago.

Q. Well, was there a meeting between yourself and Mrs. Reddy, Mrs. Conklin, Mr. Edward A. Reddy, at which I was present and Norman E. Conklin was present?

A. There was. I am not so sure about Edward A. Reddy being present at that time as later, but there was a meeting, and I am positive about all the persons except Edward A. Reddy.

Q. Was there any meeting at which Edward A. Reddy was present?

A. I met him in your office. I don't remember him being present with the other people.

Q. Well, now, at this last meeting, this meeting at which Mr. Norman Conklin, Mrs. Mollie Conklin,

(Deposition of John A. Benson.)

Mrs. Reddy, yourself and myself were present, what took place?

A. I explained fully the nature of the transaction and what would have to be done to vest the title in the United States in order that the Forest Reserve land or Monache land, so-called, might be used for the purpose of exchange and made available.

Q. Well, you say that you explained fully; what did you say? What did you explain to them? [351]

A. I said that the land would have first to be surrendered to the United States by deed in convenient parcels such as people would probably want to select, 40's, 80's, 160's, etc. That there would have to be an abstract of title furnished the United States following the deeds to the United States, and that there would have to be applications to select land in lieu of the land surrendered to accompany the deed and abstract of title, and those selections and applications would have to be signed, and there would also be needed powers of attorney to select and powers of attorney to transfer the land selected after it had been approved by the United States.

Q. Did you explain that to Mrs. Conklin and Mrs. Reddy and Norman Conklin? A. I did.

Q. Now, then, what else took place at that meeting?

A. I spoke about the price and said that it was not possible at that time for me to pay \$4.00 an acre, because I wasn't getting that, and that I thought at least that I ought to be allowed five per cent commission for selling, or twenty cents, making the price \$3.80, to be paid upon approval of the selected land

(Deposition of John A. Benson.)

by the United States, and I think it was stated by Mr. Campbell that he would like to have the money paid through the Anglo-Californian Bank.

Q. Well, was that agreed upon?

A. That was agreed upon and Mr. Conklin brought his papers to my office.

Q. Well, was there anything said at that time about a written contract being prepared between the parties, or was anything said about what papers were to be prepared, and when, if you know? [352]

A. The papers that were to be prepared were described fully and they were to be prepared immediately, and Mr. Conklin was to call at my office and bring his deed and I was to proceed with the preparation of the papers, and I agreed to furnish the abstract of title, because that was a paper—because the title was considerably mixed up by reason of *lis pendens* in the case of Broder, and I had considerable difficulty in getting certified copies of the papers, by reason of the suit having been in two counties—

Q. Just a minute as to that. Do you remember Holland Smith being present at that last meeting?

A. After we had talked a while you sent for Holland Smith, and he came into one of your little side rooms on Post Street in the Crocker Building.

Q. Did he come into the office there just about the time the people were leaving, or before?

A. Just about the time they were leaving.

Q. What was said to him about the preparation of the papers, and what he should have to do in relation thereto?

(Deposition of John A. Benson.)

A. It was agreed that he should acknowledge their respective signatures to the papers; and I have it in my mind that he called again there at a subsequent time after the papers were prepared, but that I am not positive about.

Q. Now, then, did Mrs. Reddy and Mrs. Mollie Conklin agree to accept the \$3.80 an acre?

A. They did.

Q. Did they agree to the payments to be made through the Anglo-Californian Bank upon the approvals?

A. Upon the approvals of the selected land and the Abstract of Title and deeds which were surrendered to the United States. [353]

Q. Now, then, what, if anything, did you do in relation to obtaining an Abstract of Title to these Monache lands?

A. I first investigated all the preliminary conditions, titles, the suits and everything of that kind, and got certified copies.

Q. Well, did you obtain an Abstract of Title?

A. I did.

Q. Who paid for it? A. I did.

Q. Now, then, after you left the office, did you see Mr. Norman Conklin any more?

A. I did, several times.

Q. Did Mr. Conklin—did you see him on that day at any place else? What I mean is, did you and Mr. Conklin go to any place in relation to these papers that day?

A. I can't say whether it was that day or shortly

(Deposition of John A. Benson.)

after, but it was about that time, we went to my office 507 Montgomery Street.

Q. Were these papers prepared by you?

A. The papers relating to the transfer of title to the United States were prepared by me, yes, sir.

Q. Well, now, who was present when you were preparing them? Who assisted you, if anyone, in the preparation of these papers?

A. Mr. Conklin and my clerks.

Q. Well, now, what part, if any, did Mr. Conklin take in the preparation of these papers? Just state fully.

A. He furnished a map on which the lands were delineated, and the patents, and I think there were several certificates of purchase for which patent was not issued.

Q. Were patents procured on those, as you remember? A. Yes, sir.

Q. By whom? A. By myself.

Q. How many times was Mr. Conklin in your office during the [354] preparation of the papers?

A. I can't say positively; a number of times, generally in the morning.

Q. More than once?

A. Yes, sir, and we had a great deal of discussion relative to the form of deed that was to be made to the *United*, and by reason of the peculiar situation of title—we talked the matter over and it was thought best to get up a special form of deed for not only the devisees conveying their interests but the administrators as well.

(Deposition of John A. Benson.)

Q. Was there anything said in this conversation by any person—the conversation that you had in my office in relation to what would be necessary to be done before the administrators of the estate of Reddy could sign the deed?

A. Yes, it was thought best, in fact, it was agreed that an order of the Probate Court should be obtained here.

Q. Now, have you the form of the deed that was prepared by you at the time Mr. Conklin was there?

A. I have not only a form but I have one of the deeds that is not yet surrendered.

Q. Will you please produce it?

(The witness does so.)

Mr. CAMPBELL.—I will offer that in evidence in connection with the testimony of Mr. Benson, and ask to have it marked Defendants' Exhibit "A."

Mr. CAMPBELL.—(After discussion between counsel.) I am prepared to prove the signature of Emily M. Reddy and Edward A. Reddy and Caroline S. Reddy. Is that the signature of Mollie Conklin?
[355]

Mr. DAVIDSON.—We are not prepared to admit that that is the signature of Mollie Conklin, and for the purpose of this deposition we will deny that it is her signature.

Mr. CAMPBELL.—I offer that in evidence.

(It is marked Defendants' Exhibit "A.")

Mr. DAVIDSON.—I object to the introduction of the paper in evidence on the ground that it is incompetent, irrelevant and immaterial, and does not tend

(Deposition of John A. Benson.)

to prove any of the issues in this case, and for the further reason that it does not relate to any of the property in controversy in this action, and for the reason that it is not shown that the paper offered in evidence is the deed of the complainant, Mollie Conklin, or that she ever signed or acknowledged or delivered the same.

Mr. CAMPBELL.—We will prove it.

The WITNESS.—I hadn't finished that answer yet.

This form of deed was discussed very fully between Mr. Conklin and myself, and he agreed that that was in his opinion the only legal way the title of the Reddys could be divested and put in the United States, taking that in connection with his mother's title; and he approved that form of deed.

Mr. CAMPBELL.—In connection with the testimony of this witness, Mr. Davidson, I offer in evidence the order of the Probate Court authorizing the transfer of this property to be made.

(It is marked Defendants' Exhibit "B.")

Mr. DAVIDSON.—The complainant, Mollie Conklin, objects to the offer of Defendants' Exhibit "B" on the ground that the same is incompetent, irrelevant and immaterial and does not prove or tend to prove any of the issues in this case, and would not affect in any manner, and is not binding upon the complainant, Mollie Conklin, and for the further reason that the said paper [356] referred to was an order made by the Probate Court of the City and County of San Francisco, State of California, with-

(Deposition of John A. Benson.)

out any jurisdiction and void on its face and for a purpose not warranted by the law of the State of California.

Mr. CAMPBELL.—It is offered on the question of good faith. I understand this Bill of Complaint, on the part of Mollie Conklin, charges defendant Campbell and defendant Benson with fraud perpetrated on her, and it is offered to show part of the entire transaction, I understand that the allegation in the complaint being that they didn't understand the nature of the proceedings, and as a part of the entire transaction this is offered.

Q. Were all the deeds that were prepared by you and Mr. Conklin of a similar character to Exhibit "A"?

A. They were identical, except in the description of the land.

Q. Now, will you please state, if you know, about how many of these deeds were prepared?

A. As nearly as I can remember, somewhere between thirty and fifty.

Q. Now, in the presence of Mr. Conklin, were any other papers than the deeds prepared, any powers of attorney or anything of that kind or character?

A. They were shown to him, is my recollection, but the form of the application and power of attorney was not so distinctly different from the printed form as to require much discussion as was the case with the deed.

Q. After these papers were prepared, do you know what was done with them?

(Deposition of John A. Benson.)

A. They were given to Mr. Bernard in your office for signature and verification. [357]

Q. Were they sent to Mr. Bernard, or did you give them to him, do you know?

A. I think they came down to the office after them.

Q. Well, then, were they returned to you?

A. They were at different times; not all at once.

Q. The papers that were returned to you were acknowledged by whom?

A. Holland Smith, as I remember. There is something there that I ought to state in relation to these deeds to make it clear.

Q. Well?

A. Why, at the time of my talks with Mr. Reddy, these Forest Reserve lands were exchangeable—

Mr. DAVIDSON.—(Interrupting.) We object to the statement of the witness and move to strike out all that part already given as incompetent, irrelevant and immaterial and not tending to prove any issue of the case and not binding upon the Complainant, Mollie Conklin.

Mr. CAMPBELL.—Proceed.

Mr. DAVIDSON.—We object to the introduction of any testimony along that line.

Mr. CAMPBELL.—Proceed.

The WITNESS.—(After answer being read to him as follows: “Why, at the time of my talks with Mr. Reddy those Forest Reserve lands were exchangeable”)—for any lands of the United States, surveyed, or unsurveyed, open to Homestead entry. The Act of June 6, 1900, becoming operative by its

(Deposition of John A. Benson.)

terms October 1, 1900, prohibited the selection of unsurveyed lands. It was thought advisable, therefore, to surrender these lands [358] to the United States with the Abstracts of Title, as far as possible, because, so far as they could be used in selecting unsurveyed lands, they would, of course, be more valuable; hence, it is my recollection that as soon as that matter was made known to the Conklins at Bakersfield, the deeds were all executed to the United States. That is all I wanted to add here.

Q. Now, then, after the execution of these deeds, and after this order of the Probate Court, which is in September, 1900, did you pay any money?

A. I did.

Q. To whom did you pay the money and how?

A. I paid some checks to you in anticipation of approvals that might come afterwards.

Q. Did you pay any money before any approvals were made? A. I think I did.

Q. Do you remember how much?

A. I think \$5,500.00.

Q. Have you the checks with which you paid it, or were they destroyed in the fire?

A. No, they were destroyed in the fire.

Q. Have you any records in your office of any papers that were not destroyed in the fire, in relation to this matter?

A. No, except such fragments as I showed you here, and possibly some similar papers.

Q. Now, then, the papers that came back to you signed by these parties and acknowledged as you

(Deposition of John A. Benson.)

have stated, what were they? Enumerate them.

A. Deeds, applications for selection, which were signed, but not acknowledged, powers of attorney to select, which gave authority to make a new application in case the first one proved ineffective, and powers of attorney to sell after the [359] title had been approved by the United States.

Q. During the entire negotiations in this entire matter, who represented Mrs. Mollie Conklin?

A. As far as I know, Mr. Conklin—N. E. Conklin.

Q. Did I, J. C. Campbell, in any conversation that I had at any time with you, or with any of those persons in your presence, purport to represent Mrs. Conklin?

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, not tending to prove any of the issues in this case, and not the proper way of proving the relation of attorney and client.

Mr. CAMPBELL.—Do you say that I am not charged as having acted for her?

Mr. DAVIDSON.—My position is that your declaration would not be admissible.

A. You did not.

Q. With whom did you understand you were dealing when you were dealing with me? For whom was I acting?

Mr. DAVIDSON.—We object to that as calling for the conclusion of the witness.

A. For the Reddy estate.

Q. Now, after these papers were signed, and after you had paid this \$5,500, did you have any conversation with Mr. Norman Conklin in relation to the

(Deposition of John A. Benson.)

powers of attorney being revoked and if so, when was that conversation?

A. That I cannot remember positively, but it was sometime afterwards; perhaps about two years, when I first learned of the powers of attorney being revoked, I learned that objections were made to them by him.

Q. Well, did you have any conversation with him about that?

A. I think he wrote me a formal letter relative to it.

Q. Have you that letter? [360]

A. I have not.

Q. Where is it?

A. It was destroyed in the fire.

Q. Well, can you state the contents of it?

A. I think it is in the testimony here.

Mr. DAVIDSON.—Just a moment. I think we have a copy of it.

Mr. CONKLIN.—I think my letter is in evidence.

Mr. DAVIDSON.—If we have it, I would prefer that he examine it and see if that is the letter.

Mr. DAVIDSON.—(Referring to transcript of testimony.) We will refer to that as Complainant Mollie Conklin's Exhibit U-1, a part of the deposition of Norman E. Conklin in this case. (Hands same to Mr. Campbell.)

Mr. CAMPBELL.—Q. Does that appear to be a copy of the letter which you received?

A. (After examining.) That is a copy of one letter; yes.

(Deposition of John A. Benson.)

Q. Had you been notified before that time of the revocation of the powers of attorney which had been given you by Mrs. Mollie Conklin?

A. Not directly, but indirectly; yes.

Q. How long prior to the receipt of the letter, if you know? A. Several months.

Q. After that, did you continue to pay any money on these lands to Mrs. Reddy?

Mr. DAVIDSON.—We object to that as irrelevant, incompetent and immaterial, not binding upon the complainant, Mollie Conklin.

A. I did not.

Q. What? [361]

A. My impression is that I did not. That is my recollection.

Q. Had you paid any money to Mrs. Reddy before that time? A. I had; yes.

Q. Do you know how much?

A. It was in the neighborhood of \$10,000; I think it was \$10,400 and something.

Q. Was that paid as the titles were approved?

A. Generally speaking, it was paid faster—about as they were approved; it was paid as requested.

Q. Were these applications, or any of them, ever suspended by the Government?

A. Yes, I think they were all suspended in 1903.

Q. What month?

A. Why, directly, I think in November, 1903, but indirectly and partially at various times in the different land districts where selections had been made. I wouldn't state more positively offhand. Gener-

(Deposition of John A. Benson.)

ally speaking, however, I understood that much earlier than that the approval of all the selections involving this business had been suspended upon complaint of Mr. Conklin, before the Interior Department.

Q. Do you know how long before?

A. Why, I think at least a year before; perhaps more.

Q. Did you in any of your dealings with Mollie Conklin conceal from her the fact that she was making powers of attorney to make lieu selections?

A. I did not. I fully explained it to Mr. Conklin and to her in his presence.

Q. Did you send to her any blank powers of attorney to be signed, or were they all filled up when they were signed? [362]

A. I think they were generally filled in with the description of the land.

Q. Did you state to Mollie Conklin any fact in relation to the manner or method by which this land would have to be handled that was untrue?

A. Not to my knowledge, no, sir. I explained everything fully as I understood it.

Q. Do you think of anything else that occurred there?

A. Why, no, only that I occupy a double relation here, and something might come out on direct examination—

Mr. CAMPBELL.—(Interrupting.) A double relation; what do you mean by that?

A. I mean that I am a witness on behalf of the

(Deposition of John A. Benson.)

various parties now, and I am a defendant also; that is all that I mean.

Q. Well, have you anything that you desire to state in behalf of any of them?

A. I don't think of anything more, only, were any other persons present at the time of the preparation of these papers?

Mr. CAMPBELL.—Q. Oh, yes, who were present at the time the papers were prepared by yourself and Mr. Conklin, or prepared by you in his presence?

A. My clerk, Miss McGillan, Miss C. E. Glover and a portion of the time, J. H. Lavenson.

At this point the taking of the deposition of the witness John A. Benson adjourned until 2 o'clock P. M. [363]

(Afternoon Session—2 o'clock, P. M.)

(The taking of the deposition of JOHN A. BENSON resumed.)

Cross-examination.

Mr. DAVIDSON.—Q. Mr. Benson, when did you first become acquainted with Mollie Conklin?

A. At Mr. Campbell's office, at the meeting there.

Q. About what time, what year? A. 1900.

Q. About what time in 1900?

A. I think it was in the early summer or towards the middle of the summer.

Q. You were acquainted with Patrick Reddy?

A. Yes, sir.

Q. How long did this meeting occur when you first met Mrs. Mollie Conklin after the death of Patrick Reddy?

(Deposition of John A. Benson.)

A. I should judge from two to three months.

Q. And that was the first time you had ever met the complainant, Mollie Conklin?

A. To the best of my recollection, yes, sir.

Q. Were you acquainted with Norman E. Conklin previous to this time? A. I think not.

Q. Now, did you meet Norman E. Conklin the first time that you met Mollie Conklin?

A. I may have, but my impression is that I did not.

Q. Your impression is that he was not present at that first meeting?

A. There was some elderly lady present at the first meeting, it might have been Mrs. Reddy's sister, some elderly lady.

Q. Are you positive that Mollie Conklin was present at the [364] second meeting in Mr. Campbell's office after the death of Patrick Reddy?

A. I am not positive it was she, but it was some elderly lady that came in with Mrs. Reddy.

Q. Then, as I understand, your testimony, after the death of Patrick Reddy, you first had a meeting at which yourself, Mrs. Reddy and Mr. Campbell were present. A. Yes, sir.

Q. At the next meeting there were present, Mr. Campbell, Mrs. Reddy, yourself and some elderly lady? A. Yes, sir.

Q. You are not positive that Mrs. Molly Conklin was present at that meeting? A. I am not.

Q. Was Mrs. Norman E. Conklin present at that second meeting? A. I think not.

Q. About when did the third meeting occur and

(Deposition of John A. Benson.)

who was present?

A. In about, within a very few days afterwards.

Q. In about what month did that second meeting occur?

A. In the fore part of the summer of 1900, as I remember it.

Q. How long after the death of Patrick Reddy?

A. Somewhere from two to three months.

Q. Is it not a fact that meeting occurred on the 20th of August, 1900? A. 20th of August, 1900?

Q. Yes, sir.

A. I don't think it was as late as that; it might have been.

Q. Well, would you say that the meeting occurred in the month of August, 1900?

A. I wouldn't go so close as that on dates without having something to refresh my memory, but I will bring it down to the [365] middle of the summer anyway.

Q. Now, at the second meeting—the third meeting, who were present?

A. Mr. Campbell, Mrs. Reddy, Mrs. Conklin, Mrs. Mollie Conklin, and as I remember, N. E. Conklin.

Q. Was Mrs. Coleman present at the third meeting? A. I rather think she was.

Q. Who informed you of this second meeting, that is, there would be a meeting at the time the second meeting was held?

A. My recollection is Mr. Campbell telephoned me to come up.

Q. Did he tell you at the time he telephoned you

(Deposition of John A. Benson.)

what the purpose of the meeting was?

A. I think not; I think he said, "Come up and talk that matter over"—

Q. (Interrupting.) You understood from his call what matter was to be talked over, did you?

A. That is my impression.

Q. Yes. Now, who notified you of the intended third meeting?

A. I think it was discussed at the second meeting. I think also Mr. Campbell notified me.

Q. If it was discussed at the second meeting, would you say that Mrs. Mollie Conklin was present or took any part in the discussion?

A. I would say not—the second time.

Q. The third meeting, you met at the request of Mr. Campbell? A. All meetings—

Q. (Intg.) All meetings were held at the request of Mr. Campbell? A. At his suggestion. [366]

Q. Yes. Now, was anyone else present at this third meeting besides Mr. Campbell, Mrs. Reddy, Mrs. Conklin, Mrs. Mollie Conklin, N. E. Conklin, Mrs. Coleman and yourself?

A. I think Mr. Bernard was in and out of the room.

Q. What would you say as to whether or not Mr. Bernard was present in the room during the time the negotiations were taking place?

A. I think he was there part of the time.

Q. Now, I understood you to say that at that time you agreed to sell the lands for Mrs. Conklin and Mrs. Reddy at \$4.00 an acre, you to receive a commission of five per cent; is that correct?

(Deposition of John A. Benson.)

A. Yes, sir.

Q. What steps, if any, did you request them to take relative to the placing of the property in condition to be transferred?

A. I suggested to them, as I stated in my main testimony, what was necessary to be done, what papers were necessary to be drawn.

Q. What papers did you tell them they would have to execute?

A. The deed to the United States, the applications to the United States Land Office for land to be selected in lieu of that surrendered; power of attorney to locate and power of attorney to sell the lands selected.

Q. I believe you stated that about between thirty and fifty deeds were prepared for the purpose of conveying this land to the United States Government. Is that correct?

A. That is the best of my recollection.

Q. Who prepared those deeds? [367]

A. I had them prepared. I directed the preparation.

Q. They were prepared in your office, as a matter of fact, were they not, Mr. Benson?

A. They were.

Q. And under your agreement, under the agreement between yourself, Mrs. Reddy and Mollie Conklin, who was to attend to the preparing of the deeds, if any one? A. I was.

Q. You were also to attend to the preparation of such other papers as were necessary to effect this

(Deposition of John A. Benson.)

purpose? A. And also the abstract.

Q. And also the abstract. Now, Mr. Benson, what agreement, if any, did you have at the time of this third meeting as to what should be done with the deeds after they were prepared and executed?

A. I don't remember having any specific agreement, except this, that I was to deliver them to them for execution, and they were to be sent to me as I called for them.

Q. As you called for them? A. Yes, sir.

Q. Was there any agreement at that time as to where the deeds or any papers should be left for execution?

A. It was understood that they were to be taken to Mr. Campbell's office and left with Mr. Bernard. In fact, it was agreed—

Q. (Interrupting.) Was there anything said at the time that the papers should be left with Mr. Bernard? That is, was there any specific person in Mr. Campbell's office mentioned?

A. I think that was the direction from Mr. Campbell or some one to have Mr. Bernard take charge of the papers.

Q. Then, as a matter of fact, at that time, the agreement was that the papers, after being executed, should be returned [368] to Mr. Campbell's office, and Mr. Campbell directed that they should be turned over to Mr. Bernard to look after the details of securing the execution and delivery. Is that correct?

A. I wouldn't go so far as to say what that was,

(Deposition of John A. Benson.)

because that was a matter that didn't concern me.

Q. Then you did understand, did you not, that these papers were to be delivered at Mr. Campbell's office, and that Mr. Bernard was to take charge of the papers, according to the instructions given at that time by Mr. Campbell?

A. I don't know as to that detail, because there was details between them that I didn't know—

Q. Where was Mr. Bernard employed at that time, Mr. Benson?

A. He was in Mr. Campbell's office.

Q. He had been in Mr. Campbell's office, had he not, for a considerable period of time previous to this meeting? A. Ever since he was a small boy.

Q. And he has been continuously in Mr. Campbell's office since that time, has he not?

A. To the best of my knowledge.

Q. Now, you say the deeds were to be delivered to you as you called for them, after their execution? Is that correct?

A. That is my understanding.

Q. Now, with whom were these deeds to be left after their execution and up to the time you called for them? A. That I don't know.

Q. You don't know? A. No.

Q. As a matter of fact, you understood, did you not, that you were to call for those deeds at Mr. Campbell's office as you wanted them?

A. I did, yes. [369]

Q. Yes. Now, what other papers were to be delivered and executed in addition to the deeds?

A. The applications to select and powers of attor-

(Deposition of John A. Benson.)

ney to select and sell.

Q. Now, did I understand that the powers of attorney to select and sell were to be joint or separate instrument?

A. Separate instrument; the power of attorney to select was simply made in case it became necessary that a substitute application should be made.

Q. Now, the applications to select, Mr. Benson, did they contain—I understand that they contained a description of the land, the base land, released, or surrendered to the Government?

A. That is correct, and authority to select other land in lieu.

Q. But those applications for sale didn't have a description of the land to be selected in lieu of the first land surrendered to the Government?

A. I don't think so; my recollection is that they contained a description of the surrendered land and authority to select other lands in lieu of that surrendered.

Q. Now, Mr. Benson, as a matter of fact, was it not necessary that applications such as you say were executed by Mrs. Conklin and the Reddys—was it not necessary for them to also contain, before filing with the United States Land Office, a description of the land sought to be selected in lieu of the land surrendered? A. Certainly.

Q. Is it not a fact that at the time the applications were signed, they were signed in blank—that is, that they were signed and left blank so far as the description of the lieu land [370] was concerned?

A. In some cases it may have been so; not so far as

(Deposition of John A. Benson.)

the lieu land was concerned, a description of the lieu land, no, but the selected land; probably, yes.

Q. Is it not a fact, Mr. Benson, that the lieu lands are the lands that were selected in lieu of the base lands?

A. That depends on the nomenclature of the attorneys in different parts of the country, and the way they considered it.

Q. Is not the term applied to transactions of this kind by the United States Government in which they treat the lands surrendered as base lands, and the lands selected as lieu lands?

A. Sometimes they do and sometimes they consider the land that is surrendered as lieu land; different departments of the Government treat it differently.

Q. Then, I understand you to say—so there may be no misunderstanding upon the matter—that the applications as executed contained, each one of them, a description of a part of the Monache lands and recited that the lands therein described had been surrendered to the Government, and it also was an application to select other lands in lieu of the lands surrendered, but that the selected lands, the descriptions were not included at the time of their execution. Is that correct?

A. I think the printed application itself would be the best evidence.

Q. Have you one of those applications?

A. I have copies of them, but I haven't any here.

Q. Could you procure those copies?

A. I might, or similar ones. If you really want

(Deposition of John A. Benson.)

the information, I can give it to you absolutely.

(At this point the taking of the deposition of the witness was suspended on account of the absence of Mr. Campbell from the [371] room.)

Mr. DAVIDSON.—Q. We had just been going over the meetings, Mr. Campbell.

Mr. CAMPBELL.—Go ahead.

Mr. DAVIDSON.—Q. Now, Mr. Benson, I will call your attention to an instrument appearing on pages 24 and 25 of the separate answer of the defendants R. M. Cobban and E. B. Weirick, individually and as trustee, in this action. You may examine this instrument and state whether or not that is in substantially the same form as the application for the selection of land which you have testified with regards to. (To Mr. Campbell.) We were just trying to get an understanding, Mr. Campbell, as to what the applications contained.

A. (After examining.) I do not think it is in the same form.

Q. You don't think it is in the same form?

A. No, sir.

Q. Now, explain, please, in what different form these applications were from the one to which your attention has just been called.

A. Generally speaking, the applications—

Q. (Interrupting.) Mr. Benson, I want to say that I am asking you now not generally, but I am asking you as to the applications in the particular transactions under consideration.

A. That is what I am talking about. Generally speaking, the applications for land to be selected in

(Deposition of John A. Benson.)

lieu of the so-called Monache lands, were, as I remember, joint applications, and they were made by Mollie Conklin on behalf of her undivided one-half interest, and by Emily M. Reddy and Edward A. Reddy respectively as administratrix and administrator of the estate of Patrick Reddy, deceased; and I am not certain but that the [372] fact of their ownership as devisees was also included, but I am positive of the other.

Q. Now, at the time these applications for the selections were executed and delivered by Mollie Conklin and by Emily M. Reddy and Edward A. Reddy, you may state whether or not they contained a description of the lands which were requested to be selected—I mean now the specific tract—whether or not the specific tract to be selected was inserted in each individual application?

A. I can't state positively as to that but I am positive that the lieu land was described—that is the Monache land.

Q. The Monache land. Then, at the time of execution you are positive that the Monache lands were included—the description—in each separate application? A. Yes, sir.

Q. Now, when,—the way in which you handled the Monache lands, when would you insert the description of the lands requested to be selected?

A. Whenever it became known.

Q. Whenever it became known what land to select? A. Yes, sir.

Q. And that became known after the applications were delivered to you?

(Deposition of John A. Benson.)

A. I can't say as to that; sometimes it might and sometimes it might not.

Q. Now, during what period were these deeds delivered to you, Mr. Benson?

A. The deeds were all delivered to me, I think, prior to October 1, 1900; I am not sure of that, but that is my impression now. [373]

Q. You secured all those deeds at the office of Mr. Campbell or from his office?

A. I think so.

Q. Now, when were the applications to select land in lieu of the Monache lands delivered to you?

A. At divers times.

Q. Well, during what period of time?

A. During the preceding year, or two years.

Q. Then, when were the powers of attorney delivered to you?

A. I think the powers of attorney were delivered the same time as the applications.

Q. Now, where did you secure, or who delivered these applications and powers of attorney to you?

A. Mr. Bernard.

Q. From Mr. Campbell's office?

A. I don't know as to that.

Q. Well, he was working in Mr. Campbell's office at the time? A. Yes, sir.

Q. Well, now, you are positive, are you, that these applications and powers of attorney were not delivered to you at the same time as the deeds to the Government for the Monache lands?

A. I am.

Q. You are positive of that? A. Yes, sir.

(Deposition of John A. Benson.)

Q. Now, have you a form or a copy of any of the powers of attorney to make the selections that you say were executed and delivered to you by Mollie Conklin and Mrs. Reddy and Edward A. Reddy?

A. I don't know; I think I might find a form; if not they were destroyed in the safe in the fire. [374]

Q. You may state whether or not those powers of attorney to select contained a description of the surrendered lands and a description of the lands to be selected at the time they were delivered to you.

A. That I cannot state positively; sometimes they did and sometimes probably they did not.

Q. You think sometimes they did and sometimes they did not contain such a description?

A. They always, to the best of my recollection, had a description of the Monache lands.

Q. And sometimes you say they had a description of the lands to be selected?

A. I think so.

Q. Do you remember the transaction of your selling some of these rights to select to one R. M. Cobban, one of the defendants herein?

A. I think I do.

Q. Well, are you positive that you remember the transaction between yourself and Mr. R. M. Cobban?

A. In a general way, I do.

Q. Now, Mr. Benson, you sold to Mr. Cobban, did you not, certain rights to select lands based upon the Monache lands surrendered to the Government?

A. Yes, sir.

Q. You may state whether or not the applications to select land sold by you to Mr. Cobban contained a

(Deposition of John A. Benson.)

description of the lands to be selected at the time you surrendered them to Mr. Cobban, or delivered them to Mr. Cobban?

A. I can't state positively as to that.

Q. Do you remember whether or not Mr. Cobban when he would make application to you for some of the Monache base land [375] selections—whether he would also send you the description of the land which he sought to select?

A. I can't remember that.

Mr. CAMPBELL.—I desire to object to that; it is not cross-examination of anything the witness testified to in chief.

Mr. DAVIDSON.—The record, as I remember it, shows that he was examined in regard to the powers of attorney and applications.

Mr. CAMPBELL.—But nothing that he had to do with Mr. Cobban.

Mr. DAVIDSON.—We are simply examining him in regard to those powers of attorney and applications, and where they went to and where he got them.

Mr. CAMPBELL.—It is not cross-examination, and I object to it on that ground.

Q. Now, Mr. Benson, when the powers of attorney to sell the land selected were delivered to you, you may state whether or not they were delivered at the same time that the application was delivered to you.

A. I can't state positively as to that, but generally speaking I think they were. I think the three papers were all delivered at one time.

Q. As I understand it, the best of your recollection

(Deposition of John A. Benson.)

is that the deeds were delivered at one time and thereafter the application to select, the power of attorney to select, and a power of attorney to sell the lands selected, were all delivered in series at the same time.

A. That is my recollection, generally speaking. Of course, there were some exceptions.

Q. They were all delivered to you from the hands of Mr. [376] Milton Bernard?

A. Not directly from his hands. I think sometimes he brought them to my office and left them there in my absence.

Q. But they were delivered to you, as I understand, by Mr. Bernard? A. Yes, sir.

Q. Now, Mr. Benson, I will call your attention particularly to powers of attorney to sell the selected lands, and I will ask you whether or not those powers of attorney at the time they were delivered to you contained a description of the lands selected and which were—purported to be the subject of the power of sale under the powers of attorney?

A. I couldn't tell you without examining one of those powers of attorney, whether it described anything more than the Monache lands or not. I think the authority ran in this way: To sell the lands that may be selected in lieu of such and such lands described in the application.

Q. Now, Mr. Benson, at the time the powers of attorney to sell selected lands were delivered to you, you may state whether or not they contained the name of the person constituted the attorney in fact, appointed the attorney in fact, under the powers of at-

(Deposition of John A. Benson.)

torney, as delivered to you.

Mr. CAMPBELL.—I object to that on the ground it is not cross-examination.

A. I cannot state positively in every instance, probably it did in some instances and perhaps it did not in others.

Q. I will ask you in regard to the powers of attorney delivered by you to Mr. Cobban, R. M. Cobban, for the sale of lands selected in lieu of the Monache lands and ask you whether or not the powers of attorney to sell, delivered to Mr. Cobban contained [377] the name of Mr. Cobban as the attorney in fact at the time they were delivered to you.

Mr. CAMPBELL.—I object to that; the witness should be shown them.

A. I would think the power of attorney would be the best evidence.

Mr. CAMPBELL.—This is not cross-examination. Anything that took place with Mr. Cobban we have nothing to do with nor we haven't asked him anything about.

Mr. DAVIDSON.—I will ask that the question be answered.

Mr. CAMPBELL.—I submit he had no right to answer the question and I object to it on the ground it is not cross-examination. The witness is asked about a large number of papers and the papers are not shown to him and I object on the further ground that the powers of attorney are the best evidence.

Mr. DAVIDSON.—The same objection would be applicable to all deeds he has been testifying to.

Mr. CAMPBELL.—That doesn't make any differ-

(Deposition of John A. Benson.)

ence whether it is applicable or not. This is an objection I am putting to this question.

Mr. DAVIDSON.—This is a matter that will have to be threshed out and I insist that the witness answer.

A. I should prefer to consult some of the papers.

Mr. CAMPBELL.—Q. Well, can you remember until you do? A. Not positively, no, sir.

Mr. DAVIDSON.—Q. I hand you a power of attorney, dated February 13, 1901, purporting to be signed by Mollie Conklin, Edward A. Reddy, administrator of the estate of Patrick Reddy, deceased, Emily M. Reddy, administratrix of the estate of Patrick Reddy, deceased, recorded in Book 2 of Powers of Attorney, at page 353, of the records of Boise County, Idaho, [378] the paper handed you being a certified copy of a power of attorney, and I will ask you whether or not that is one of the powers of attorney delivered to you by Mrs. Mollie Conklin, Emily M. Reddy and Edward A. Reddy, for the sale of lands selected in lieu of Monache lands.

A. It is a copy and not an original, and does not give me the means of determining as to the different facts you requested me to answer. It does, however, give me this: You showed me a power of attorney, or rather an application, taken from the complaint, and ask me if I identify that as a copy. I said I did not, because it was only signed by Mollie Conklin in person, and my recollection was that the powers of attorney, application, and all papers were signed jointly by not only Mrs. Conklin but by the adminis-

(Deposition of John A. Benson.)

tratrix of the estate of Patrick Reddy, as is the case with this.

Q. I will ask you, Mr. Benson, whether or not the copy of the application I show you, contains any signature or not, or whether it is simply a form?

A. It is simply a form, but it is not the form that was used in these cases; and I see the name of Mollie Conklin filled in here, which wouldn't be the case with a blank form. I don't think that this form was used at all in any of the applications with which I had to do.

Q. Now, will you state that the power of attorney shown you is not one of the powers of attorney delivered by Mollie Conklin and the Reddys to you for the sale of selections in lieu of Monache lands?

Mr. CAMPBELL.—I shall object to that on the ground it is incompetent, irrelevant and immaterial, and it is a misnomer so far as the Reddys are concerned. An administratrix and administrator can't give a power of attorney. [379]

Mr. DAVIDSON.—He said they did.

The WITNESS.—I would prefer to have one of the originals before answering the question.

Mr. CAMPBELL.—Q. Have you any recollection that is one or not? If you remember say so, and if you don't remember say so.

A. It appears to be in general form, but there are certainly some irregularities in it that were not in the original, some misspelling. I notice the word "acerage," presumably "acreage" is meant; and some other differences of that kind. Generally

(Deposition of John A. Benson.)

speaking, as I recollect, it is in substantially the same form.

Q. I will ask you whether or not the original of the power of attorney, of which you are shown a certified copy, was one of the powers of attorney delivered to you by Mollie Conklin, Emily M. Reddy and Edward A. Reddy, for the sale of selections made in lieu of the Monache lands?

A. To answer your question I should have to spar with you a little, because none of those people ever delivered any powers of attorney to me, except through Mr. Bernard. This is in substance, as near as I can remember, the form.

Q. I will ask you whether or not the original of the powers of attorney of which you are shown a certified copy was one of the powers of attorney delivered to you by Mr. Milton Bernard from Mollie Conklin, Mrs. Emily M. Reddy and Edward A. Reddy, for the sale of selections made in lieu of Monache lands?

A. To the best of my recollection.

Q. Now, then, was the original of this power of attorney of which you are shown a certified copy, at the time it was delivered to you, complete in the same form in which it now appears [380] to be?

A. I do not know.

Q. I will ask you whether or not at the time that Mr. Milton Bernard delivered the original of this power of attorney shown you, the name "R. M. Cobban" of Missoula, County of Missoula, State of Montana, was inserted therein as the attorney in fact

(Deposition of John A. Benson.)

appointed under the power? A. I do not know.

Q. I will ask you whether or not you inserted the name of R. M. Cobban, as the attorney in fact in the original of which this is a certified copy, after it was delivered to you by Mr. Bernard?

Mr. CAMPBELL.—I object to the question on the ground it is not proper cross-examination.

A. I don't think so.

Q. Did you insert the name of R. M. Cobban in any of the powers of attorney delivered to you by Mr. Bernard after they had been delivered to you?

Mr. CAMPBELL.—The same objection.

A. I don't think so.

Q. Will you state now whether or not the name of R. M. Cobban was or appeared as the attorney in fact in any of the powers of attorney delivered to you by Mr. Bernard; which were afterwards delivered by you to Mr. Cobban, at the time you delivered them to him?

A. I don't remember as to that.

Q. You say you did not insert Mr. Cobban's name in any powers of attorney yourself?

A. I am confident that I did not. [381]

Q. What would be your best recollection as to whether or not Mr. Cobban's name was in the powers of attorney at the time they were delivered to you by Mr. Bernard?

A. I have no recollection on that subject.

Q. No recollection whatever? A. No.

Q. Now, I will ask you when you prepared the application for the selection of land in lieu of the

(Deposition of John A. Benson.)

Monache lands with reference to the time the deeds of the Monache lands were prepared?

A. A short time after; probably consecutively.

Q. Were the deeds, the applications for selection of lands, the power of attorney to make selection and power of attorney to sell selections prepared consecutively at the same time?

A. They couldn't be prepared consecutively at the same time.

Q. Well, were they prepared consecutively then?

A. Shortly following. I think the deeds were prepared first.

Q. Which were prepared next after the deeds?

A. I can't say as to that.

Q. Now, after you prepared the deeds where were they left by you prior to the time that they were signed by the plaintiff Mollie Conklin and Mrs. Reddy and Edward A. Reddy?

A. They were sent to Mr. Campbell's office.

Q. What was done with the applications, powers of attorney to select, powers of attorney to sell selections, after they were prepared by you, and previous to their execution?

A. They were sent to Mr. Campbell's office.

Q. As I understand you, the applications and the two powers of attorney were delivered to you then after their execution, as called for by you? [382]

A. That is what I testified to.

Q. Now, did you ever see Mrs. Mollie Conklin at any time after the conference in the office of which you have testified to, relative to the Monache lands?

(Deposition of John A. Benson.)

A. I am not positive as to that; my impression is that I did.

Q. About when did you next see her, if you did see her? A. I can't state as to that.

Q. Did you have any further conversation with Mollie Conklin personally as to the Monache lands?

A. I can't remember any particular conversation.

Q. Were any of the applications to make selections, powers of attorney to make selections and powers of attorney to sell lands selected executed in your office by Mollie Conklin?

A. Not to my knowledge.

Q. Were any of them executed there by either Emily M. Reddy or Edward A. Reddy?

A. Not to my knowledge.

Q. Now, did you ever meet Norman E. Conklin previous to the time of the conference at Mr. Campbell's office when Mollie Conklin and Mrs. Reddy were present?

A. Not that I remember at present.

Q. Now, when did Norman Conklin assist you in the preparation of any deeds to the Monache lands?

A. Immediately following this third meeting.

Q. Immediately following?

A. It might have been a week or ten days.

Q. How long were you and Norman E. Conklin at that time in conversation relative to the deeds to be prepared for the Monache lands?

A. Perhaps a week; perhaps not quite so long.

(Deposition of John A. Benson.)

Q. During that time where did you hold your conference?

A. In my office, 507 Montgomery Street, at a tall desk that was in the alcove, on the corner of Sacramento and Montgomery Streets.

Q. What part, if any, did Mr. Norman E. Conklin take in the preparation of the deeds for the Monache lands?

A. He brought the patents, the certificates of purchase, and a large map that was spread out on my desk, and I showed him the form of deed that I had prepared, and we discussed it particularly as to divesting the various owners of what title they had or might have and giving it to the United States, and he approved of the form.

Q. Was that all the part Mr. Conklin took in the preparation of the deeds?

A. And we discussed the conditions antecedent to the issuing of the title and *lis pendens* and the Broder business—

Q. Did you have more than one conference?

A. Oh, yes, several.

Q. Covering, you say, a week or ten days?

A. I should think a week at least.

Q. Now, are you positive that you saw Mr. Norman E. Conklin at any time within a year after the conference in Mr. Campbell's office?

A. I am emphatically.

Q. You are emphatically. Now, is it not a fact that Mr. Conklin left San Francisco for Bakersfield, California, on the evening of the conference in Mr.

(Deposition of John A. Benson.)

Campbell's office, and did not again visit the city of San Francisco for more than one year?

A. I don't know anything about his movements; I do know that during the pendency of these negotiations Mr. Conklin did [384] repeatedly come to my office and discuss these matters.

Q. You are positive that those discussions took place after the meeting in Mr. Campbell's office?

A. It is my impression that they took place afterwards. They might have been coincident with the various meetings.

Q. And they may have been before? A. Yes.

Q. If they were before the meetings in Mr. Campbell's office, would you have had a deed prepared, a form of deed for this land?

A. After the first discussion and from the fact that it was contemplated to make it, yes, I would.

Q. What part, if any, did Mr. Norman Conklin take in the preparation of the applications to select and powers of attorney to make selections and to sell selections?

A. No particular part, only I showed him that in so far as an application or power of attorney covering or conveying or dealing with the interests of various people could be included in an application similar in form to that used by the Department, that was done.

Q. Now, at the time of the conference in Mr. Campbell's office, then what agreement, if any, was there as to who should be created the attorney in fact to sell the land selected?

(Deposition of John A. Benson.)

A. No agreement whatever.

Q. Nothing said as to who should be the attorney in fact, was there? A. No.

Q. And what agreement, was there, if any, as to who should be the attorney in fact to make the selections of land in lieu of Monache lands?

A. That was to be as occasion might require.
[385]

Q. Nothing was said as to who should act as the attorney in fact for that purpose?

A. I don't think so.

Q. Was the name of R. M. Cobban mentioned as attorney in fact or in any way connected with the sale of the Monache lands at the time of the conference in Mr. Campbell's office?

A. I am confident that it was not.

Q. Do you remember how much land you sold, how much of the selected land or the right to select lands you sold to R. M. Cobban?

Mr. CAMPBELL.—The question is objected to on the ground it is not cross-examination.

A. I do not.

Q. Do you remember how much money, if any, you received from Mr. R. M. Cobban from the sale of lands selected in lieu of the Monache lands?

Mr. CAMPBELL.—I object to that, and instruct the witness that he need not answer, on the ground it is not cross-examination, and has nothing whatever to do with this case.

Mr. DAVIDSON.—We insist the witness answer the question.

(Deposition of John A. Benson.)

The WITNESS.—I will answer, with your permission (to Mr. Campbell).

Mr. CAMPBELL.—All right, if you want to answer, go ahead.

A. I do not remember, because I sold Mr. Cobban various other pieces of scrip at the same time, and how much of the Monache scrip was used I can't remember at present at all.

Q. Mr. Benson, if I remember, you testified in regard to having a conference with Mr. Pat Reddy just previous to his death, and that immediately after having the conference, you left the State. About when did that conference take place and about when did you leave the State after the conference?
[386]

A. My best impression would be that that conference was in the spring of 1900; I won't say that I left the State, but I left San Francisco, and was absent at the time of his death.

Q. How long were you out of San Francisco at that time? A. That I can't say.

Q. Now, at the time you had the conference in Mr. Campbell's office, who sent for Holland Smith?

A. I do not know.

Q. What instruction, if any, was given Holland Smith at that time as to his part in this transaction?

A. I do not know.

Q. Was there anything said as to why Holland Smith was sent for at that time?

A. I don't remember in relation to that at all, other than the fact that he was sent for.

(Deposition of John A. Benson.)

Q. You do not recall now who sent for him?

A. No.

Q. If you stated on your direct examination that he was sent for by Mr. Campbell, was that a mistake?

A. If I stated by Mr. Campbell, I meant some one in Mr. Campbell's office. I use the generic term.

Q. Now, did you state on your direct examination that you paid into Mr. Campbell's office during the year 1903 the total sum of \$10,400, the balance on the Monache land deal?

A. I said up to and including that year, that that was my recollection.

Q. Did that amount of \$10,400 include the \$5,500 that you testify to? A. It did not.

Q. So that the total amount that you paid in on the Monache lands would be \$15,900. Is that correct, up to and including the year 1903? [387]

A. According to the best of my recollection.

Q. Do you remember about the date you made the first payment on the Monache lands?

A. I do not.

Q. Have you any way by which you could refresh your memory as to the date of that payment?

A. Only by looking at my check-book.

Q. Have you your check-book?

A. No, it is burned. Or by some papers in the Reddy estate that you have already been shown.

Mr. DAVIDSON.—No, I think that statement is to be furnished by Mr. Campbell later.

Mr. CAMPBELL.—Yes, I will furnish that later.

(Deposition of John A. Benson.)

Mr. DAVIDSON.—Q. Were the powers of attorney to select lieu lands, powers of attorney to sell selected lands, acknowledged by Mollie Conklin at the time they were delivered to you?

A. I think so.

Q. Now, you say that you received notice of the revocation of the power of attorney in the Monache land matter by Mrs. Conklin; when did you receive the first notice, as near as you can remember?

A. A copy of letters here which you have shown is the best evidence as to that.

Q. Was that the first notice you received?

A. The first direct notice that I can remember. I had received information for a year or two previous.

Q. The letter, Complainant's Exhibit "U-1" is a copy of the letter, as I understand, that was received by you from Mr. N. E. Conklin or from Mollie Conklin instead of N. E. Conklin, with reference to the revocation of the powers of attorney. [388]

A. I remember the letter and I remember my impression on receiving it.

Q. That letter is dated April 28th, 1903?

A. Yes, sir. Do you want to know what my impression was?

Q. No, I don't care for your impression. Now, you say for a year or two previous to this time you had information that they were endeavoring to revoke these powers of attorney?

A. I said so, yes. Can I explain?

Q. From whom did you receive such information?

A. From various agents and people from different

(Deposition of John A. Benson.)

land offices, and I think from my attorney in Washington—no, *to particularly* with reference to the revocation of the power of attorneys as with reference to dissatisfaction with the price received and endeavoring to upset the title to the United States.

Q. Now, do I understand you to state now positively that you received all the papers in connection with the Monache land from Mr. Bernard?

A. To the best of my recollection, yes, or through his agency.

Q. Through his agency? By the agency of Mr. Bernard? A. Yes.

Q. Now, Mr. Benson, were you a witness in the case of Mollie Conklin, plaintiff, vs. John A. Benson, Thomas B. Walker, Chester L. Hovey and others, defendants, in the Superior Court of the State of California, in and for the County of Modoc?

A. I was.

Q. I will call your attention to your deposition in that case and ask you whether or not the question was asked you: "State what was said there, or the substance of what was said there"—and to which in reply you answered, "I stated that at the utmost the price at which land was selling was \$4.00 [389] an acre; that I couldn't make anything out of that; that I should receive the commission that the real estate dealers received, that is to say, five per cent on sales, which would be twenty cents less than \$4.00. The matter was held in abeyance for some time, a week or two, and I was informed by Mr. J. C. Campbell that the offer had been accepted; that is to say

(Deposition of John A. Benson.)

that I explained at the time of the meeting with all those people, the procedure that would have to be entered into, the deed of the land to the United States, the selection by the owners, and application which would have to be made to select the land and power of attorney to sell and convey." Will you state whether or not that question was asked and that answer given by you?

A. To the best of my recollection, yes, but I would rather refer,—

Mr. DAVIDSON.—That is a certified copy, Mr. Benson, I am referring to.

Mr. BENSON.—I would rather take it from the printed copy, because I can find it better.

Mr. DAVIDSON.—Q. I asked you whether or not you made the answer I have just repeated to you, and you stated you preferred to examine the printed copy, and I called your attention to the fact we were showing you a certified copy.

A. (After examining.) I think I did; that is correct, yes, sir.

Q. I will ask you whether or not this question was asked you in the deposition just referred to: "Sell and convey what?" Answer: "The lands selected in lieu of that surrendered. At the subsequent meeting, about a week later, when this sale was confirmed, these matters were recapitulated and it was agreed that I should pay for these lands as fast as the title to the selected land was accepted by the United States. I [390] made my arrangements through Mr. Campbell; received the papers from

(Deposition of John A. Benson.)

him, and paid over whatever money I paid, to him, generally speaking, in checks on the Anglo-Californian Bank." Was that question asked you and was that answer given by you in your deposition?

A. Undoubtedly it was.

Q. Is that answer correct?

A. Substantially so. There is only one difference I note. Here I testify that the papers were given to me by Mr. Bernard; there by Mr. Campbell. By Mr. Bernard I mean Mr. Campbell, and vice versa; one was the agent of the other.

Q. When you say they were delivered to you by Mr. Bernard and Mr. Campbell, you mean the same thing? A. Yes, sir.

Q. I will ask you whether or not in your deposition in the case of Mollie Conklin vs. John A. Benson, Thomas B. Walker, Chester L. Hovey and others, in the Superior Court of Modoc County, State of California, this question was asked you: "Q. State who, if any one, under these negotiations, and afterwards the confirming of the arrangement, was to attend to the execution of these papers, the preparation of them and execution of them," and whether or not in reply to that question you gave the following answer: "I was to prepare them and send them to Mr. Campbell's office for execution." Is that correct? A. I think so.

Q. Was that question asked you and that answer given? A. Undoubtedly.

Q. I will ask you whether or not in your deposition just shown you this question was asked you:

(Deposition of John A. Benson.)

“State any conversation [391] or any act or thing done or said between yourself and Mr. N. E. Conklin about the execution of these papers. That is, did he know that the deeds and powers of attorney were being executed?” Was that question asked you at that time? A. I think so.

Q. I will ask you whether or not in reply to the question just shown you, you gave the following answer: “He knew that they were being prepared; so far as any knowledge of their being executed, I am unable to state. I think he came into my office after some of them had been executed and we discussed the matter of the abstract.” Is that correct? Did you give that answer?

A. To the best of my recollection, yes.

Q. Now, did you ever explain the papers that would be necessary to be executed to Mr. Norman E. Conklin at any time after the meeting in Mr. Campbell’s office? A. I did.

Q. You explained them to him afterwards?

A. Yes.

Q. I will ask you whether or not in your deposition to which your attention has been already called, the following question was asked you: “State whether or not he knew [referring to Norman E. Conklin] “the kind of papers which were being prepared,” to which you answered “They were fully explained by me in his presence.” “Question: Before they were executed or afterwards?” Answer. “Before they were prepared, in Mr. Campbell’s office. That is the time they were fully explained.”

(Deposition of John A. Benson.)

Is that correct, and did you give that answer?

A. Undoubtedly I did.

Q. Is the answer as there given correct?

A. In substance yes; there was talk afterwards and further explanation, but the general explanation was at that time— [392]

Q. You say you afterwards explained the papers fully to him, to Mr. Norman E. Conklin?

A. Yes, but the general, fullest explanation was at the time in Mr. Campbell's office.

Mr. BENSON.—I would like to move that a copy of this testimony be put in evidence here, this deposition.

Mr. DAVIDSON.—We won't resist that.

Mr. BENSON.—And marked Exhibit "C."

Mr. CAMPBELL.—That is a part of the re-examination, Mr. Benson; you have a right to have read into the record any explanatory matters which are put in there.

Mr. DAVIDSON.—Q. Now, Mr. Benson, I will ask you whether or not, in your deposition heretofore referred to, this question was asked you: "State whether or not Mrs. Conklin, the plaintiff, ever made any claim to you that she only understood that she was to execute deeds," and your answer was: "She made no representation at all. My dealings after the transaction was accepted were with Mr. Campbell."

Was that question asked and that answer given by you? A. Yes.

Q. Is that correct?

(Deposition of John A. Benson.)

A. It would be correct if I could explain it.

Mr. CAMPBELL.—You have a right to.

The WITNESS.—Let me look at that. (After examining.) At the meeting when I explained the deeds to the United States, abstracts of title and papers that would be necessary, the whole matter was discussed at that time, and at no subsequent time until after some communications from Mr. Conklin did I understand that there was any claim made regarding the character of the various papers that entered into the transaction other than I have already explained. [393]

Q. Well, is it a fact, as stated in your answer, that after the meeting in Mr. Campbell's office, all of your dealings were with Mr. Campbell?

A. That is right.

Q. Were the negotiations for the Monache land proposition closed at the time you held a meeting with the interested parties in Mr. Campbell's office, or afterwards through Mr. Campbell?

A. Afterwards.

Q. Afterwards through Mr. Campbell?

A. Yes; afterwards I understood through Mr. Campbell that the proposition had been accepted.

Q. Then, as I understand, the proposition was not accepted at the time you had the meeting in the office—Mr. Norman E. Conklin and Mrs. Mollie Conklin?

A. Not finally.

Q. Did you mean the first or last meeting?

A. I meant the last meeting. It was generally understood it was to be accepted, but afterwards I was informed—

(Deposition of John A. Benson.)

Mr. CAMPBELL.—(Interrupting.) Q. By whom?

A. By you; at least that is my former testimony. I think that is all.

(At this time, the taking of the deposition of the witness John A. Benson, was continued until tomorrow, Saturday morning, at 10 o'clock A. M.)

Saturday, April 30, 1910—10 o'clock A. M.
Cross-examination of JOHN A. BENSON (Resumed).

Mr. DAVIDSON.—Q. Mr. Benson, I understood you to testify that after the meeting in Mr. Campbell's office, and [394] after you had been informed that the deal would be consummated along the lines suggested that you had taken up the clearing of the titles of the Monache lands?

A. I think, upon reflection, that I have those transactions in inverse order.

Q. Well, when did you do anything towards the straightening up of the titles of the Monache lands preparatory to abstracting the same?

A. Sometime in mid-summer, probably July and continuously, as I was requested by the Department to furnish the certificates as to the fact that no suits were pending.

Q. What, if anything, did you do in order to straighten up the title to the Monache lands?

A. My impression is that I secured patents on some certificates of purchase for which patents had not been issued that I furnished certificates from the County Clerks and County Recorders that there were no actions or conflicting titles pending in their

(Deposition of John A. Benson.)

respective offices; and eventually, as it developed, I took up the matter of suits in re Broder and *lis pendens* that had been filed with the Clerk of the courts in Inyo and Modoc County, the suits having been transferred in one trial from Inyo to Mono County.

Q. Mr. Benson, did you procure the entry of a supplemental decree of distribution in the estate of A. R. Conklin, deceased in relation to the Monache lands, or any part of them? A. I think not.

Q. Was one procured at that time at your suggestion?

A. Well, there was some paper in connection with it procured, but just what that was, I don't remember; there probably was a certified copy of whatever appeared on record in the court of the county—

Q. I will ask you whether or not you have in your possession [395] a certified copy of a supplemental decree of distribution entered in the estate of A. R. Conklin, deceased, on or about the 11th day of July, 1900?

A. I can't tell without examining my papers.

Mr. DAVIDSON.—I wish you would examine them, those you have with you. I think among the papers you showed me the other day, you showed me that paper, Mr. Benson, and I would like to have an opportunity to make another examination of it.

Mr. CAMPBELL.—(After some discussion.) But I don't understand that this land belonged to the estate of Conklin. * * * It was my understanding that A. R. Conklin during his lifetime deeded these lands to Mollie Conklin.

(Deposition of John A. Benson.)

Mr. CONKLIN.—It was deeded back again to my father.

Mr. CAMPBELL.—And that passed through his estate?

Mr. CONKLIN.—Yes.

Mr. CAMPBELL.—I never knew that.

(The witness after some discussion produces paper.)

Mr. CAMPBELL.—Q. What is it? Let me see it.

(The witness hands same to Mr. Campbell, who examines it and passes same to Mr. Davidson.)

Mr. DAVIDSON.—(After examining.) I will ask that this be marked Complainant's Exhibit "V" for identification.

(It is stipulated by and between the parties that a certified copy of the paper referred to and marked by the notary Complainant's Exhibit "V" for identification may be attached to the deposition and made a part thereof.)

Mr. DAVIDSON.—Mr. Benson, I hand you paper marked Complainant's Exhibit "V" for identification, being a certified copy of Amended Decree in the matter of the Estate of Alvah R. Conklin, deceased, in the Superior Court of the City and [396] County of San Francisco, State of California. You may examine the paper and state whether or not that was one of the papers procured by you in the straightening up of the title of the Monache lands.

A. (After examining.) I cannot say in relation to that other than I find it among my papers.

Q. You found it among your papers? A. Yes.

(Deposition of John A. Benson.)

Mr. DAVIDSON.—That is all, Mr. Benson.

Redirect Examination.

Mr. CAMPBELL.—Q. What does that date purport to be?

Mr. DAVIDSON.—July 11, 1901, Mr. Campbell.

Mr. CAMPBELL.—Q. Mr. Benson, did you procure this decree to be made?

A. I did not.

Q. You got a certified copy of a decree that was made?

A. I find it among my papers, and I simply take it for granted it is what it shows on its face to be.

Q. Now, Mr. Benson, you stated on yesterday that—I believe the language was that all your transactions in relation to this matter were with Mr. Campbell. What do you mean by that?

A. I mean so far as the Reddy interest is concerned and that alone.

Q. The first interview you had was with Mrs. Reddy and Mr. Campbell, was it not?

A. I think so.

Q. The second interview was with Mrs. Reddy and Mrs. Conklin, Norman E. Conklin and Mr. Campbell; there may have been some others present.

A. I know we had a general interview, and I think that was the second interview. [397]

Q. Then, there was a third and last interview at which Mrs. Reddy, Mrs. Conklin, Mr. Norman E. Conklin and Edward A. Reddy at least were present, was there not?

A. To the best of my recollection, yes.

(Deposition of John A. Benson.)

Q. At that interview was it not agreed—were not all the matters which those people were to do, and the price at which you were to convey this land agreed upon?

Mr. DAVIDSON.—We object to that question as leading and suggestive.

A. They were.

Q. Now, was not this the agreement that was made at that time: That the parties were to convey the land to the United States, and execute a power of attorney to select, and when those selections were approved you were to pay for those lands through the Anglo-Californian Bank?

A. That was the agreement; there were also other papers to be executed.

Q. Was there anything said about any other papers to be executed at the time of that agreement? If so, what were they?

A. The application to select—

Q. Was that a power to select?

A. No, the power to select was only to supplement the application to select in case it was lost and also the power to sell.

Q. Was there anything said in any of those conversations about a power of attorney to sell the property before these persons were paid for it?

A. I don't remember that matter being mentioned at all.

Q. Wasn't the agreement that when the titles were approved you were to pay for them? [398]

A. It was.

Q. Was there any agreement that they were to

(Deposition of John A. Benson.)

credit you or give you any credit for any of these titles at all?

A. I don't understand the question as you put it.

Q. Was any title to pass to you for these properties before they were paid for?

A. There was no statement made of that kind and no understanding of that kind that I remember.

Q. Now, then, when you left with Mr. Conklin, Mr. Holland Smith and Milton Bernard, the papers were to be prepared, were they not, the deeds to the United States and the selection papers?

A. That arrangement, I think, was made at the second meeting.

Q. At the second interview?

A. The second interview; and I want to correct my other testimony to this extent. I think all my transactions with Mr. Conklin were before the last interview.

Q. Now, then, was it not—at any rate, at whichever interview it was at which this agreement was made, was not the only thing to be done a petition to be filed by the Reddy interests to procure the permission of the Government of the United States?

A. That was one of the things required; if I can examine Exhibit "A," and take the dates, I can tell you. (After examining.) Yes, sir, I think so.

Q. And when you stated yesterday that you received a telephone from Mr. Campbell that everything was all right, was not that telephone from Mr. Campbell as to the fact that the Court had signed the order permitting the Reddys to sign that deed?

(Deposition of John A. Benson.)

A. Yes, sir. [399]

Q. Now, this money which you paid, the \$5,500 was paid before the approval of any of the titles, was it not? A. I am positive it was.

Q. Was not all the money which you paid to the Reddy estate paid, as you understand it, before there was any title approved? In other words, did not Mrs. Reddy, through myself, request you to put up some money on the contract, and do not the papers in the Reddy estate show moneys received on Benson contract?

A. That is my recollection of it; I can answer you further by referring to a letter.

Q. Go ahead.

A. I see in my letter of December 11, 1901, to you, I said that "Up to the present date there has not been a single location accepted by the Commissioner of the General Land Office." That is in my mind accentuated by the fact that these copies of the proceedings in the *lis pendens* case bear a date still subsequent to this, my impression being then that the Commissioner of the General Land Office had required proof that there were no suits or actions pending in the courts of the different counties in which the land was situated, and therefore, the *lis pendens* proceedings, copies of them had been procured.

Q. You knew at the time you paid the money, other than the \$5,500, that that money was going to the Reddy estate, did you not?

A. I understood so, particularly after Mr. Conklin

(Deposition of John A. Benson.)

has refused to receive any more money on account.

Q. You met Mrs. Reddy in my office after you were informed that Mr. Conklin had refused to take any more money, did you not, and did she not say that she would take the money and go on with the contract in so far as she was concerned? [400]

A. I know she said she would go on with the contract in so far as she was concerned; I couldn't state positively as to all of that unless I examine the dates on which Mr. Conklin notified me.

Q. That is right. Now, then, did you have any other agreement or transaction with Mr. Campbell other than that which took place at the three meetings, or at the meetings in his office at which these various parties were present, and in relation to the contract?

A. I did not save and except this: That Mr. Conklin wanted to recede from the contract; he thought he could get more money, and that matter was discussed at various times.

Q. I am talking about making a contract for the sale of this property to you.

A. Nothing whatever.

Q. The money that was paid was sent over to myself or to the office of Campbell, Metson & Campbell, was it? A. Yes, sir.

Q. And after the first \$5,000.00, it was understood that that money was to go to the Reddy estate. You understood that?

A. The statement was made to that effect, yes, sir.

Q. Now, then, Mr. Benson, are you not mistaken

(Deposition of John A. Benson.)

in stating that you got all the papers from the office of Campbell & Metson; in other words, did you not send one of your clerks down to Holland Smith and get a large bundle of papers from Holland Smith in connection with this Reddy-Conklin matter?

A. Since my attention has been called to it by Mr. Lavenson, yes, I did; but it was a matter of hearsay from my clerks as to Milton's bringing the papers to the office; of my own [401] knowledge, I don't know whether I ever received a single paper individually or personally from Milton or not.

Q. All you know about the matter, then, is that you sent the papers up to the office of Campbell, Metson & Campbell, and they were received at your office again?

A. That is all I know about it.

Q. Save and except what you got from Mr. Lavenson—from what Mr. Lavenson told you?

A. I remember sending him around to Holland Smith after some papers, and judging from the papers that I have just examined and the date which the deed bears, as compared with the date of the order of Judge Coffey, I should infer that after receiving notice from you of the issuance of the order by Judge Coffey, that I immediately sent to Holland Smith for the papers.

Q. Now, is there anything else you want to explain in relation to your testimony? I have been asking you for myself. Now, if you want to make any statement in your own behalf, do so.

A. Nothing further than that this is a matter of

(Deposition of John A. Benson.)

ten years old, and I haven't read the testimony taken in the former cases, or hadn't at the time I testified; and from two or three circumstances I am convinced that I got the cart before the horse in this; that my talks with Mr. Conklin were previous to the final meeting in your office when the contract was ratified. I am inclined to this from thinking the matter over, and from two or three things; one is the fact that papers were presented and discussed and explained to the notary at the meeting at which the agreement was ratified, and the papers could not have been prepared offhand; hence I am satisfied [402] that the discussion with Mr. Conklin was previous to that. I also have, since he called my attention to it, a hazy recollection of his making a statement that he had to get through and go to Bakersfield. Those things all lead me to believe that the two transactions were in inverse order to which I testified as regards time only.

Mr. CAMPBELL.—That is all, I think.

Recross-examination.

Mr. DAVIDSON.—Q. Now, as I understand, Mr. Benson, you now say you had no conversation with Mr. N. E. Conklin in regard to the preparation of any deeds, or any other papers after the final talk, the consummation of the deal, that is the contract.

A. I don't think I did.

Q. And that all your conferences with him were previous to the time that an agreement had been reached?

A. I am inclined to think from these facts in my

(Deposition of John A. Benson.)

mind that I was mistaken about that. There is one thing further I would like to explain.

Mr. CAMPBELL.—Very well; go ahead.

Mr. BENSON.—I was shown in the complaint a copy of an application to select in which Mollie Conklin's name appeared, and asked if that was not a copy of the application sent out from my office to Mr. Cobban. I replied that it was not because all applications and all the papers were signed either three or five fold; that is to say, that the three parties participating, Mrs. Conklin, Emily M. Reddy and Edward A. Reddy generally signed twice, once as devisees and once as administrator or administratrix—administratrix or administrator. From that fact, I [403] testified that that application was not one of those received from the parties owning the land, and when I testified in relation to receiving the papers from Mr. Campbell, I meant that I received the papers from Mr. Campbell on account of the Reddy interest, but they were in Mr. Campbell's custody because the signature of Mollie Conklin was a component part of the respective papers.

Mr. DAVIDSON.—Q. Now, at the time that you drew the deeds and powers of attorney, and applications to select lands in lieu of the Monache lands, I believe you state now that Mr. Conklin was not in conference with you during the preparation of those papers.

A. Not at all; he was in conference with me during the preparation of those papers at my office.

Q. Were the papers prepared before or after the

(Deposition of John A. Benson.)

contract to convey was consummated?

A. Before is my memory.

Q. You say, now, that you were preparing the papers for the transfer of the Monache lands before there had been an agreement to sell them?

A. Before there had been a ratified agreement.

Q. Yes. Did you not state, Mr. Benson, in your examination in chief that at the final meeting at which the deal was ratified, that you explained to the parties fully what papers would have to be prepared?

A. That must have been at the second meeting that I made the full explanation; I also discussed the details fully at the final meeting.

Q. Do you say now that you had two meetings with Mr. N. E. Conklin with reference to this matter in the office of Mr. Campbell? [404]

A. I won't say as to Mr. N. E. Conklin, but I will say that Mr. N. E. Conklin came to my office many times and discussed this matter.

Q. That was all previous to the ratification of the deal? A. That is my recollection.

Q. Do you say now that you had two conferences with Mollie Conklin in the office of Mr. Campbell at or about or up to and including the time the deal was ratified? A. That is my best recollection.

Q. Now, was Mr. Ned Reddy present at either one of those meetings? A. I think he was.

Q. Are you positive?

A. That is to the best of my recollection.

Q. Was Mrs. Coleman present?

A. Some elderly lady wearing black was present, and I think it was Mrs. Coleman.

(Deposition of John A. Benson.)

Q. Was Ned Reddy present at the time in Mr. Campbell's office when Mr. N. E. Conklin was present? A. I think that he was.

Q. If he was present at all during those conferences, was he present at the time Mr. N. E. Conklin was present? A. I think he was.

Q. I will ask you whether or not in your deposition in the case of Mollie Conklin, plaintiff, vs. John A. Benson, Chester L. Hovey, and others, in the Superior Court of Modoc County, in the State of California, you gave the following answer: "There was following that, perhaps a week or more after my conversation with Mrs. Reddy and Mr. Campbell, there was a meeting in Mr. Campbell's office in the Crocker Building at which were present Mr. N. E. Conklin, Mrs. Mollie Conklin, Mrs. Reddy, J. C. Campbell, Milton Bernard, and I think a Mrs. Coleman was present, and myself." Did you give that answer? A. I did. [405]

Q. Is that true?

A. To the best of my recollection.

Q. Now, I will ask you whether or not in the same deposition this question was asked you: "Q. Was Ned Reddy present? A. My impression is that he was not." Was that question asked and that answer given by you at the time that deposition was taken?

A. It was.

Q. Is that true?

A. As I have now testified, I cannot state positively whether he was or not.

Q. Now, Mr. Benson, I will call your attention to a letter marked Complainant's Exhibit "N-1," pur-

(Deposition of John A. Benson.)

porting to be a letter from John A. Benson to the Hon. J. C. Campbell, dated San Francisco, California, December 11, 1901. You may examine that letter and state whether or not that is a letter written by you to Mr. Campbell, relating to the Monache lands.

A. I prefer to see the original letter.

Mr. DAVIDSON.—The original is in evidence and cannot be withdrawn. I will show you a copy and you can compare it; it is the same letter that is there, that you have shown me in the transcript.

Q. Examine Complainant's Exhibit "N-1," and state whether or not that is the letter written by you to Mr. Campbell.

A. The letter itself is the best evidence. It is in the case.

Mr. DAVIDSON.—Well, I insist that the witness answer to the best of his recollection.

Mr. CAMPBELL.—Read it and see.

The WITNESS.—I will answer that on the direction of my attorney, but I still think the letter is the best evidence, and it is in the case. I don't think I should be called upon [406] to confirm or deny any statements made in a typewritten document—

Mr. DAVIDSON.—The letter is certified to; this is certified to by the Examiner.

Mr. CAMPBELL.—I suggest you read the letter, and if you have any recollection in regard to anything about it, Mr. Benson, that you can so state.

The WITNESS.—Very well.

Mr. CAMPBELL.—Now, you are your own at-

(Deposition of John A. Benson.)

torney in this case. I can't direct you one way or the other.

Mr. DAVIDSON.—I understand Mr. Campbell is not appearing, so far as the record is concerned; the record shows that you are appearing for yourself.

Mr. DAVIDSON.—Q. I call your attention, Mr. Benson, to the fact it shows that it is certified to by the Examiner. That is the letter on page 43 (indicating).

A. (After examining.) The copies are not alike; and I must say that I cannot see the purpose of asking a man to testify as to the correctness of a certified copy which disagrees with the original, when the original is in evidence.

Mr. CAMPBELL.—Q. Do you know whether or not that is a copy of the letter which you wrote, is the question?

A. One thing is certain; either one or the other of these letters is not a literal copy, because they do not agree.

Mr. DAVIDSON.—Q. In what respect, Mr. Benson?

A. In the second line, in the Boise City copy, the word "you" does not appear.

Q. That is in the one that is shown you for identification?

A. Yes, sir. On the 5th line 5th folio, the expression "30 Stats. period, comma," parenthesis 36 parenthesis, appears, while in the printed copy there is no terminal "s" in the abbreviation which is apparently

(Deposition of John A. Benson.)

intended to mean Statutes. [407] I wouldn't be this particular, or I wouldn't undertake to split hairs in this way, were it not for the fact that I am called upon to testify as to the identity or correctness of a letter which is already in evidence. I will state, however, that to the best of my recollection, and in general terms, these letters express about what I remember as writing at the time.

Q. Then, as a matter of fact, Mr. Benson, you did write a letter to Mr. J. C. Campbell on the 11th day of December, 1901, purporting to state, in general terms, at least, and in substance, the same things as stated in the letter marked Complainant's Exhibit "N-1," in this case?

A. I won't state as to the time without the letter.

Q. Mr. Benson, I will ask you whether or not, in your deposition in the case in Modoc County, heretofore shown you, this question was asked you: "State whether or not there was ever any arrangement or agreement between you and Mollie Conklin about putting any papers in escrow" to which you answered "No, there was not, because the negotiations were concluded with Mr. Campbell when I was not present." You can examine that, and state whether or not the question was asked you and the answer given.

A. (After examining.) I think I made that answer.

Q. Now, Mr. Benson, at about what date, as near as you can remember, was it that Mr. Conklin notified you that Mollie Conklin would not receive any

(Deposition of John A. Benson.)

more money on the Monache lands?

A. I cannot remember.

Q. Was it before or after the 11th day of December, 1901? A. I cannot state. [408]

Q. How was that notice given you, Mr. Benson?

A. By letter, is my recollection.

Q. Is it not a fact, Mr. Benson, that the first notice you received that Mrs. Conklin would not receive any more money was the notice of the revocation of the powers of attorney?

Mr. CAMPBELL.—When you say “powers of attorney,” I understand there are two powers of attorney.

Mr. DAVIDSON.—The revocation was to all powers of attorney, I think.

Mr. CAMPBELL.—But there are two powers of attorney, as I understand it, one to select the lieu lands; the other one, which you showed me, to convey, I think.

Mr. DAVIDSON.—There were two sets.

The WITNESS.—I can't answer that without seeing copies of the letter.

Q. I will again show you Complainant's Exhibit “U-1” and ask you whether or not that letter is a copy of the letter you received notice that she would not receive any more moneys on the Monache lands?

A. I think there are other letters previous to this.

Q. Have you those letters with you?

A. I have not.

Q. Have you those letters in your possession?

A. I have not.

(Deposition of John A. Benson.)

Q. What has become of them?

A. They were destroyed in the fire.

Q. In the San Francisco fire? A. Yes.

Q. How long previous to the letter Complainant's Exhibit "U-1," were you notified that Mrs. Conklin would accept no more money on the Monache lands?

[409]

A. I think there was a letter from Mr. Conklin himself, and there were letters written to—one, I think, to Mr. Metson, and some communications in some way to the office to the effect that Mr. Conklin was dissatisfied with the terms of the sale; he thought he could make more money out of it by selling to someone else, and asking that the papers be taken from me.

Q. Was that before or after the letter shown you Complainant's Exhibit "U-I"?

A. To the best of my recollection it was a considerable time before. In reference to "U-1," I treated it as somewhat of a burlesque. Do you want to know why?

Q. Yes.

A. In that it stated impossibilities. I was asked to restore the title in the condition in which I received it. That was impossible, because there is no law passed by the United States to reconvey lands of this character for which it had received deeds which had been placed on record.

Q. Now, Mr. Benson, I understood you to say that the lands were to be paid for as the selections were approved. Is that correct—the selected lands were to

(Deposition of John A. Benson.)

be paid for as the lands selected were approved? Is that true?

A. That is my understanding of it; yes.

Q. I will ask you whether or not you sold any of the rights to make selections of land in lieu of the Monache lands for which you received pay previous to the time that the selections were approved by the United States Government?

Mr. CAMPBELL.—I object to that on the ground it is irrelevant, immaterial, incompetent and not cross-examination. It has nothing to do whatever with the contract with those people. I make that objection for Mr. Benson, not for myself, because he [410] has not any lawyer here and he is on the witness-stand.

A. Conditioned upon the final ratification of the title by the United States, yes.

Q. Is it not a fact, Mr. Benson, that in all of the rights to make selections in lieu of Monache lands surrendered, as you have testified to, to Mr. R. M. Cobban, a codefendant in this case—did not Mr. Cobban in all cases pay you the full purchase price for the rights to make the selections previous to the time that any application or powers of attorney or other instruments were delivered to him, and previous to the time that any application was made to select the lands involved in this case?

Mr. CAMPBELL.—The same objection made.

A. I think that he did.

Q. Is it not a fact that all papers to make selections delivered to Mr. Cobban were delivered in escrow through different banks in San Francisco and

(Deposition of John A. Benson.)

Boise, Idaho? A. I do not think so.

Q. Had you made any sales to Mr. R. M. Cobban of any of the rights to select lands in lieu of the Monache lands previous to the time that the letter was written by you to Mr. Campbell on December 11, 1901? A. I cannot state as to the time.

Q. Did you not, as a matter of fact, Mr. Benson, deliver to Mr. Cobban, all of the rights to make selections of lands involved in this case previous to December, 1901?

A. I cannot state as to the time.

Q. Would you say that you did not deliver and sell all these rights to select land in lieu of the Monache lands to Mr. Cobban previous to the 11th day of December, 1901? [411]

A. I can answer you more intelligently in relation to that, when I consult some memorandum.

Q. When can you consult that memorandum, Mr. Benson? A. During the recess.

Mr. DAVIDSON.—Very well. I will ask that Mr. Benson consult the memorandum. I will not close my examination until he is prepared to make an answer to the last question. That will be all the cross-examination we will make of Mr. Benson until he is prepared to answer the last question propounded to him.

(At this time, the further hearing of the deposition of John A. Benson was continued until Monday, May 2d, 1910, at 10:30 o'clock, A. M.)

Monday, May 2d, 1910, 10:30 A. M.

Cross-examination of JOHN A. BENSON Resumed.

(Deposition of John A. Benson.)

Mr. DAVIDSON.—Q. Mr. Benson, during the recess have you examined your memorandum so that you are now prepared to answer the question as to whether or not you have sold and delivered all of the rights to select lands in lieu of the Monache lands, to Mr. Cobban previous to December 11, 1901?

A. Basing my answer on the letter to Mr. Campbell, a copy of which was produced here, and from my conversation with my employees, etc., the best information that I can give is that a [412] portion of these selections (so called) was sold before and a portion after that letter was written. Just the dates I can't give nor just the quantity.

Q. Mr. Benson, had you received the pay from Mr. Cobban for the rights to select and deliver to him previous to December 11, 1901?

A. For such as I delivered to him previous to that time.

Mr. DAVIDSON.—I think that is all at present.

Mr. CAMPBELL.—(To Mr. Benson.) You say you want to explain something about that receipt?

Mr. BENSON.—There is one question that wasn't brought out in reference to the perfection of the title that that receipt calls to my mind. Shall I go right ahead and explain it?

Mr. CAMPBELL.—Go ahead.

Mr. BENSON.—One reason why selections couldn't be approved earlier on portions of the land was that the lands themselves were all patented to the State of California and had not been listed by the United States to the State of California, and I pro-

(Deposition of John A. Benson.)

cured that to be done by the employment of an attorney in Washington, and it was a condition prerequisite to the acceptance of the title to the United States; and I also paid the taxes that were due.

Mr. CAMPBELL.—Is that all?

Mr. BENSON.—Yes.

Mr. CAMPBELL.—Q. How much did you pay for listing those lands? A. I paid the attorney \$250.

Q. How much taxes did you pay?

A. About \$350. [413]

Mr. DAVIDSON.—Q. Mr. Benson, do you remember having signed a receipt marked Complainant's Exhibit "W"? (Hands same to witness.)

A. I recognize the receipt and admit that it is in my handwriting.

Q. Well, now, was that receipt given about the time that Mr. Conklin was checking up the descriptions in your office, if you remember?

A. I should say offhand, it was given at the time of the first interview. The descriptions were quite intricate and I think that Mr. Conklin, upon leaving the office was requested to leave the papers in the hands of Miss Glover; and before doing so, I think this receipt was given.

Q. You say that the second interview, at which this talk took place was about ten days or two weeks afterwards, as I remember?

A. I know some interval intervened. I can't say which it was.

Q. I mean the one that was held in Mr. Campbell's office at which you and Mr. Conklin and his mother were present, when you talked over the terms of the

(Deposition of John A. Benson.)

disposal of the Monache lands?

A. It was sometime, I should say, after this and before the final submission of the papers. [414]

City and County of San Francisco,
State of California,—ss.

I, Flora Hall, a Notary Public in and for the City and County of San Francisco, State of California, do hereby certify that the witnesses in the foregoing depositions named, to wit, Joseph C. Campbell, John A. Benson, James H. Lavenson and Clara E. Glover, were by me first duly sworn to testify the truth, the whole truth and nothing but the truth; that the depositions of said witnesses were taken pursuant to stipulation hereunto annexed, at Room No. 514, Balboa Building, San Francisco, Cal., commencing at 2 o'clock P. M. on Thursday, April 28th, 1910, to which time the taking of said depositions had been duly and regularly continued by consent of the parties.

That the testimony of said witnesses was taken down in shorthand by me, and was afterwards by me reduced to typewriting, and when completed, was carefully read over by the witnesses, Joseph C. Campbell, James H. Lavenson and Clara E. Glover, and by them respectively corrected and subscribed in my presence; the witness John A. Benson having died before his deposition was by him subscribed, his deposition is attached hereto unsigned, and I hereby certify that the same is a full, true and correct copy from my shorthand notes of the testimony given by said John A. Benson on the taking of the said depositions.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my official seal at my office in the City and County of San Francisco, State of California, this 9th day of June, 1910.

[Seal]

FLORA HALL,

Notary Public in and for the City and County of San Francisco, State of California. [415]

[Defendants' Exhibit "A."]

KNOW ALL MEN BY THESE PRESENTS, THAT, WHEREAS, we, the undersigned, are the owners of the land hereinafter described, included within the limits of the Sierra Forest Reservation in the State of California, which land we desire to relinquish to the United States, and select in lieu thereof an equal quantity of vacant land open to settlement, as provided by the Act of Congress of June 4, 1897; (30 Stat. 36).

NOW, THEREFORE, we, Mollie Conklin, a widow, of Bakersfield, County of Kern, State of California and Edward A. Reddy of the City and County of San Francisco, State of California, Devisee under the Last Will and Testament of Patrick Reddy, deceased, also Administrator of the Estate of Patrick Reddy, deceased, and Emily M. Reddy of the City and County of San Francisco, State of California, surviving wife and devisee under the Last Will and Testament of Patrick Reddy, deceased, also Administratrix of the Estate of Patrick Reddy, deceased, do hereby release, remise, quit-claim, grant and relinquish to the UNITED STATES OF AMERICA, the said land, which is described as follows:

The Northwest quarter of Southwest quarter of Section Fifteen (15) in Township Seventeen (17) South, Range Thirty-five (35) East, Mount Diablo Meridian,
situated in the County of Inyo, State of California, and containing Forty (40) acres, and we agree to accept in lieu thereof other land to be hereafter selected by us, our assigns, or legal representatives, equal in area to that herein relinquished.

(Put in Inyo Co.

N. G. (

(Abstract [416]

WITNESS our hands this Nineteenth day of September, 1900.

MOLLIE CONKLIN.

EDWARD A. REDDY,

Devisee Under the Last Will and Testament of Patrick Reddy, Deceased.

EMILY M. REDDY,

Surviving Wife and Devisee Under the Last Will and Testament of Patrick Reddy, Deceased.

EDWARD A. REDDY,

Administrator of the Estate of Patrick Reddy, Deceased.

EMILY M. REDDY,

Administratrix of the Estate of Patrick Reddy, Deceased.

I, Emily M. Reddy, surviving wife of the said Patrick Reddy do hereby consent and join with my late husband's estate in the foregoing conveyance, hereby waiving and releasing my homestead, dower or other right that I have or may hereafter acquire in and to

the land above described.

Witness my hand the Nineteenth day of September, 1900.

EMILY M. REDDY.

I, Caroline S. Reddy, wife of the said Edward A. Reddy, do hereby consent and join with my husband in the foregoing conveyance, hereby waiving and releasing any homestead, dower or other right that I may have or may hereafter acquire in and to the land above described.

Witness my hand the Nineteenth day of September, 1900.

CAROLINE S. REDDY. [417]

State of California,

City and County of San Francisco,—ss.

On this Nineteenth day of September, one thousand nine hundred, before me, Holland Smith, a Notary Public in and for the said City and County of San Francisco, personally appeared Mollie Conklin, a widow, Edward A. Reddy, devisee under the Last Will and Testament of Patrick Reddy, deceased, and Administrator of the Estate of said Patrick Reddy, Caroline S. Reddy, his wife, and Emily M. Reddy, surviving wife, devisee under the last Will and Testament of Patrick Reddy deceased, and Administratrix of the Estate of said Patrick Reddy, personally known to me to be the same persons whose names are subscribed to the within instrument and they duly acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my official seal the day and year first above written.

[Seal]

HOLLAND SMITH,

Notary Public in and for the City and County of San Francisco, State of California.

Defendants' Exhibit "A." [418]

[Endorsed]: Defendants' Exhibit "A." F. Hall, Notary Public, N. G. Pnt. in Deed to R. M. Cobban, June 28-01. Deed. Mollie Conklin, Edward A. Reddy and Emily M. Reddy to United States of America. Dated Sept. 19, 1900. Relinquishment of Land Within a Forest Reserve. Act June 4, 1897. Recorded at Request of, this day of, 190, at minutes past M. in liber of Deeds, page, Recorder. By, Deputy. [419]

[**Defendants' Exhibit "B."**]

In the Superior Court of the City and County of San Francisco, State of California.

In the Matter of the Estate of PATRICK REDDY,
Deceased.

On hearing the motion of J. C. Campbell, attorney for Edward A. Reddy and Mrs. Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, made upon the papers on file and of record herein, and it appearing therefrom that an order was made and entered in this court on the 18th day of September, 1900, authorizing the sale of certain lands hereinafter described, belonging to said estate, for the purpose, therein stated; and it further appearing that the sale thereof may be facil-

itated by the surrender of said lands in exchange for lieu lands, as provided for by an act of Congress, therefore,

IT IS ORDERED, ADJUDGED AND DECREED that said administrator and administratrix be and they are hereby, authorized and empowered to surrender to the United States of America the lands, and the title thereto, hereinafter described, now belonging to and constituting a part of the estate of said deceased, as a basis for a selection of other lands, under the Act of June 4th, 1897 (30 U. S. Stat. at Large, p. 36), which provides as follows:

“That in cases in which a tract covered by an unperfected bona fide claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desired to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant [420] land open to settlement not exceeding in area the tract covered by his claim or patent.”

Which said selection or selections they are hereby authorized and empowered to make.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said administrator and administratrix be and they are hereby authorized and empowered to sell the lands which may be so selected in lieu of the lands surrendered, and to give a deed or deeds, good and sufficient in law, to vest the title of the lands so selected, both present and that which may be hereafter acquired, in the grantees who shall become the purchasers under and by virtue of this order of sale.

Said lands hereinabove referred to as now belonging to and constituting a part of the estate of said deceased, are described as follows: [421]

LIST OF PATENTED LANDS
OWNED BY
MOLLIE CONKLIN AND THE ESTATE OF
PATRICK REDDY, DECEASED.

Location No. 2042, for the S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 3; E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 10, T. 21 S., R. 34 E.; N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 10; E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Sec. 30; T. 21 S., R. 35 E.; S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Sec. 32, T. 22 S., R. 35 E.; N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Sec. 22, T. 22 S., R. 36 E.; M. D. M. containing 640.00 acres.

Location No. 2043, for the S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 36, T. 19 S., R. 34 E. M. D. M. containing 120.00 acres.

Location No. 2044, for the S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$; S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 14; E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Sec. 22; N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ and N. $\frac{1}{2}$ of Sec. 23; N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Sec. 26, and N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 27, T. 17 S., R. 34 E., M. D. M. containing 920.00 acres.

Location No. 2045, for the S. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 33; N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 34, T. 17 S., R. 35 E. M. D. M. containing 280.00 acres.

Location No. 2046, for the N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Sec. 11; E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Sec. 15; N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of Sec. 33, T. 19 S., R. 35 E., M. D. M. containing 240.00 acres.

Location No. 2047, for the E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, and S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 13; W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of Sec. 14; N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 15; N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 23; N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ of Sec. 24, T. 18 S., R. 34 E., N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 18; and N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 19, T. 18 S., R. 35 E., M. D. M. containing 1120.00 acres.

Location No. 2048, for the N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 34, T. 19 S., R. 35 E.; N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 4; W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$, S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 3; S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and E. $\frac{1}{2}$ of Sec. 10; S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of Sec. 14; E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 15; E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Sec. 20; W. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 21; S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Sec. 22; S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ of Sec. 23; W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 26; N. W. $\frac{1}{4}$ of N. E.

$\frac{1}{4}$ of Sec. 35, T. 20 S., R. 35 E., M. D. M. containing 2680.00 acres.

Location No. 2049, for the S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 6, E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Sec. 7, T. 18 S., R. 34 E., M. D. M. containing 200.00 acres.

Location No. 2050, for the N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Sec. 28; N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Sec. 29; S. E. $\frac{1}{4}$, S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Sec. 30; W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 31, T. 18 S., R. 35 E.; and N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Sec. 6, T. 19 S., R. 35 E., M. D. M. containing 1160.00 acres. [422]

Location No. 2051, for the N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 31; N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ and E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Sec. 32, T. 17 S., R. 35 E., M. D. M. containing 240.00 acres.

Location No. 2079, for the N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Sec. 9; S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Sec. 15; S. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Sec. 16; N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of Sec. 22, T. 17 S., R. 35 E., M. D. M. containing 640.00 acres.

Location No. 2081, for the E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 9, T. 21 S., R. 35 E., M. D. M. containing 80.00 acres.

Location No. 2082, for the S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 4, T. 17 S., R. 34 E., M. D. M. containing 80.00 acres.

Location No. 2083, for the S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 17, and N. $\frac{1}{2}$ of N. E.

$\frac{1}{4}$ of Sec. 20, T. 22 S., R. 36 E., M. D. M. containing 160.00 acres.

Location No. 2084, for the E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 16, T. 18 S., R. 34 E., M. D. M. containing 160.00 acres.

Location No. 2085, for the E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 25, T. 19 S., R. 34 E., M. D. M. containing 80.00 acres.

Location No. 2199, for the N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 11, T. 20 S., R. 34 E., M. D. M. containing 280.00 acres.

Location No. 2240, for the S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 36, T. 18 S., R. 35 E., M. D. M. containing 200.00 acres. [423]

Done in open court this 19th day of September A. D. 1900.

J. V. COFFEY,
Judge.

Office of the County Clerk of the City and County of San Francisco.

I, Wm. A. Deane, County Clerk of the City and County of San Francisco, and ex-officio Clerk of the Superior Court thereof, do hereby certify the foregoing to be a full, true and correct copy of the Order to Surrender Lands, etc., in the matter of the Estate of Patrick Reddy, (Dec'd) now on file and of record in my office.

Witness my hand and the seal of said court, this
19th day of Sept., A. D. 1900.

[Seal]

WM. A. DEANE,
Clerk.

By V. F. Northrop,
Deputy Clerk.

[Endorsed]: Filed Sept. 19, 1900, Wm. A. Deane,
Clerk. By V. F. Northrop, Deputy Clerk. [424]

[Endorsed]: No. 23438 Dept. 9. In the Superior
Court of the City and County of San Francisco,
State of California. In the Matter of the Estate of
Patrick Reddy, Deceased. Order. Due service of
within admitted this day of,
1....., Attorney for Filed
....., 1....., Clerk. By,
Deputy Clerk. Reddy, Campbell & Metson, At-
torneys for, Rooms 116, 117, 118, 119, 120,
121, 122, Crocker Building, San Francisco, Cal.

2618. Recorded at the Request of Abstract Com-
pany, Sept. 20, 1900, at 5 min. past 3 o'clock, P. M.
in vol. 100 of Deeds, page 237, Tulare County
Records. J. O. Thomas, Recorder. By W. S.
Hayes, Deputy Recorder. \$3.10.

Defendants' Exhibit "R." Flora Hall. Notary
Public. Recorded at the request of F. E. Densmore,
June 18th, 1901, at 31 minutes past 10 o'clock, A. M.
in Vol. E. 1 of Deeds, page 271, et seq. Records of
Inyo County, Calif. J. E. Meroney, Recorder. By
..... Deputy Recorder. \$3.10. [425]

Complainants' Exhibit "V."

*In the Superior Court of the State of California, in
and for the City and County of San Francisco.*

In the Matter of the Estate of ALVAH RUSSELL
CONKLIN,

Deceased.

Amended Decree.

The petition of Mollie Conklin, executrix of the last will and testament of Alvah Russell Conklin, deceased, also the surviving wife of said deceased, and also devisee under the said last will and testament, heretofore filed herein, praying for an amended decree correcting descriptions of certain real estate belonging to the estate of said deceased, and also for distribution of the same to her as said sole devisee under the terms of said last will and testament of said deceased coming on regularly for hearing this 11th day of July, 1901, and it appearing to the Court therefrom, that under the original decree an error had been made in the description of the property recited in the petition on file herein, whereby said property was omitted from the decree of distribution heretofore made; and it further appearing that said property described therein is not newly discovered assets belonging to the estate of said decedent, but the same had been heretofore administered upon and erroneously omitted from the said decree; and it further appearing to the Court that the said Mollie Conklin as sole devisee of the last will and testament

of Alvah Russell Conklin, deceased, is entitled to the said property.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the said real estate hereinafter described be, and the same is hereby distributed to Mollie Conklin, surviving wife of said decedent Alvah Russell Conklin—the said property having been [426] erroneously omitted from the decree heretofore made on this 16th day of December, 1900.

An undivided one-half interest in all these certain tract, pieces or parcels of land situate in the County of Tulare, State of California, described as follows, to wit:

The south half of southeast quarter and south half of southwest quarter of Section fourteen (14) in township seventeen (17) south, Range thirty-four (34) east; east half of northwest quarter of Section seven (7); east half of southeast quarter and southwest quarter of southeast quarter of section thirteen (13); north half of northeast quarter of section twenty-three (23); northeast quarter of southwest quarter of section twenty-four (24) in township eighteen (18) South, Range thirty-four (34) east; north half of southwest quarter of section eighteen (18); north half of northwest quarter of section twenty-eight (28) and north half of northeast quarter of section twenty-nine (29) in Township eighteen (18) South, Range thirty-five (35) east; southwest quarter of northeast quarter and south half of northwest quarter of section thirty-six (36), in Township nineteen (19) South, Range thirty-four (34) east,

north half of southeast quarter and north half of southwest quarter of section thirty-four (34) in Township nineteen (19) south, Range thirty-five (35) east; northeast quarter of southwest quarter of section three (3), northeast quarter of southeast quarter of section four (4); east half; southeast quarter of northwest quarter and northeast quarter of southwest quarter of section ten (10); east half of northeast quarter, east half of southeast quarter and southwest [427] quarter of southeast quarter of section fifteen (15); east half of northeast quarter of Section twenty (20); west half of northwest quarter, southeast quarter of northwest quarter of section twenty-one (21); south half of northwest quarter of section twenty-two; northwest quarter; east half of southwest quarter and southwest quarter of southeast quarter of section twenty-three (23) in Township twenty (20) south, Range thirty-five (35) east; north half of northeast quarter of section ten (10) in Township twenty-one (21) south, Range thirty-five (35) East, Mount Diablo Meridian.

Dated July 11th, 1901.

F. H. DUNNE,

Judge of the Superior Court.

Endorsed: No. 19461—Dept. 9. In the Superior Court of the City and County of San Francisco, State of California. In the Matter of the Estate of Alvah R. Conklin, Deceased. Amended Decree. Campbell, Metson & Campbell, Attorneys for Petitioner. Rooms 115, 116, 117, 118, 119, 120, 121, 122, Crocker Building, San Francisco, Cal. Filed July 11, 1901. Wm. A. Deane, Clerk. By V. F. North-

rop, Deputy Clerk. Recorded at the request of V. A. Co., Jul. 12, 1901, at 40 min. past 3 o'clock P. M. in Vol. 3 of Dec. of Dist. Page 154 Tulare County Records. J. O. Thomas, Recorder. By W. S. Hayes, Deputy Recorder. 1.50.

I, Flora Hall, Notary Public in and for the City and County of San Francisco, State of California, do hereby certify the above and foregoing to be a full, true and correct copy of original certified copy of Amended Decree in the Matter of Estate of Alvah Russell Conklin, deceased.

Witness my hand and seal this 9th day of June, 1910.

[Seal]

FLORA HALL

Notary Public in and for the City and County of
San Francisco, State of California. [428]

Complainant's Exhibit "W" for Identification.

July 11th, 1900.

RECEIVED OF N. E. CONKLIN Swamp Land Patents aggregating 9280. acres, covering lands in what is known as the "Menacha Meadows," in Tps. 19, 20, and 21 S., Rs. 34 and 35 E., M. D. M. and also received map covering same tract. I receive these Patents for the purpose of examination and comparison to ascertain the tracts for which Patents are not on hand, and also to ascertain what portion, if any, of said lands are not listed and patented by the United States to the State of California.

JOHN A. BENSON. [429]

[Complainants' Exhibit "G."]**COMPLAINANT'S EXHIBIT "B."**

Estate of Alvah Russell Conklin, Deceased,

Mrs. Mollie Conklin, Executrix.

To Reddy, Campbell & Metson, DR.

1900.

Feb. 7.	To fee for services as allowed by court	\$250.00
---------	--	----------

DISBURSEMENTS.

1897.

Dec. 15.	Clerk's fees filing petition for pro- bate will	6.00
----------	--	------

1898.

Feb. 1.	S. F. Bulletin, publishing notice of probate of will	8.00
---------	---	------

Apr. 18.	Notary's fees inventory and ap- praisement	1.50
----------	---	------

	"Star" publishing notice to cred- itors	5.00
--	--	------

1899.

Nov.	Notary's fees, final account50
------	--	-----

	Incidental expenses90
--	-------------------------------	-----

271.90
CR.

1897.

Dec. 7.	By cash, a/c disbursements	\$10.00
---------	---	---------

1900.

Feb. 6.	By cash from W. K. Miller for pasturage	5.00	15.00
---------	--	------	-------

\$256.90

Rec'd Payment.

REDDY, CAMPBELL & METSON.

F. U. JACOBS.

June 6th, 1900.

Filed Jan. 17, 1910. A. L. Richardson, Clerk.

[430]

Complainants' Exhibit "D" [List of Powers of Attorney].

PLAINTIFF'S EXHIBIT "D."

KNOW ALL MEN BY THESE PRESENTS:

That Whereas, by an act of Congress approved June 4, 1897, (30 Stat. 36), it is provided

"That in cases in which a tract covered by * * a patent is included within the limits of a public forest reservation, * * the owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement," etc.,

And, whereas, on the Nineteenth day of September, 1900, We, Mollie Conklin (a widow) of Bakersfield, County of Kern, State of California, and Edward A. Reddy and Emily M. Reddy, Administrator and Administratrix of the Estate of Patrick Reddy, deceased, both of the City and County of San Francisco, said State, were the owners of the following described land: The S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section 11, in Township 20 South, Range 34 East, M. D. M.; The NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ (or Lot 4) of Section 6, in Township 19 South, Range 35 E., M. D. M., aggregating 323.13 acres, in the County of Tulare, State of California, which said tract prior to said

date, had been included within the limits of the Sierra Forest Reservation.

And, Whereas, on the said last named day we surrendered the said land to the United States by deed of conveyance duly executed, by which we became entitled to select other lands of equal *acerage* in lieu thereof.

Now, therefore, we have made, constituted and appointed, and by these presents do make, constitute and appoint R. M. Cobban of Missoula in the County of Missoula, State of Montana, our true and lawful attorney for us and in our name, place and stead, to enter into and take possession of each and every tract of public land in any State or Territory of the United States that has been or may hereafter be selected by us in lieu of the land surrendered to the United States as aforesaid, or any portion thereof, whether the said selection or selections be made by us personally, or by some one else acting through power of attorney from us.

Our said attorney in fact is also hereby authorized and empowered to GRANT, BARGAIN, SELL AND CONVEY by good and sufficient deed, all of the right, title and interest that we now own, hold or possess, and also all the right, title and interest that we may hereafter acquire of, in and to the land that has been or may hereafter be selected as aforesaid, or any part thereof, for such sum or price as he may deem proper.

And for all or any of the powers and purposes aforesaid, for us and in our name to make, execute, acknowledge and deliver all necessary deeds, con-

veyances, assignments or other instruments of whatever kind or nature.

GIVING AND GRANTING unto our said Attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we might or could do if personally present, with full power of substitution and *recovation*, hereby ratifying and confirming all that our said Attorney or his substitute or substitutes shall lawfully do or cause to be done by virtue hereof.

FOR VALUE RECEIVED, the receipt whereof is hereby acknowledged, this Power of Attorney is hereby made and declared to be irrevocable by us or otherwise.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the Twenty-seventh day of September, One thousand nine hundred.

MOLLIE CONKLIN. (Seal)

EDWARD A. REDDY. (Seal)

Administrator of the Estate of Patrick Reddy,
Deceased.

EMILY M. REDDY,

Administratrix of the Estate of Patrick Reddy, Deceased. [431]

Signed, sealed and delivered in the presence of
C. E. GLOVER.

J. H. LAVENSON.

State of California,

City and County of San Francisco,—ss.

On this twenty-seventh day of September, one

thousand nine hundred, before me Holland Smith, a Notary Public in and for the said City and County of San Francisco, personally appeared Mollie Conklin and Edward A. Reddy, Administrator of the Estate of Patrick Reddy, deceased, and Emily M. Reddy, Administratrix of the Estate of Patrick Reddy, deceased, personally known to me to be the same persons, whose names are subscribed to the within instrument and severally duly acknowledged to me that they executed the same, and the said Edward A. Reddy and said Emily M. Reddy further acknowledged they executed the said instrument respectively as Administrator and Administratrix.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Notarial Seal] HOLLAND SMITH,
Notary Public in and for the City and County of San
Francisco, State of California. [432]

Endorsement:

Con'd. No. 60.

Complainant's Ex. D.

Offered in Evidence, C. W. M.

POWER OF ATTORNEY.

Mollie Conklin, et al., of Bakersfield, Cal.

to

R. M. Cobban, of Missoula, Mont.

Dated Sept. 19, 1900.

To Transfer title to land selected in lieu of land relinquished within a Forest Reserve.

Act June 4, 1897.

Recorded at request of this day of

....., 190....., at minutes past M.
in liber of Deed, page

.....,

Recorder.

State of Idaho,

County of Boise,—ss.

I hereby certify that this instrument was filed for record at request of Cobban & Casey at 3 minutes past 9 o'clock A. M. this 14th day of March, A. D. 1901, in my office, and duly recorded in Book 2 of Power of Attorneys at page 305.

JOS. PENROD,

Ex Officio Recorder.

Fees \$2.00.

Filed Jan. 17, 1910. A. L. Richardson, Clerk U. S. Circuit Court. [433]

Power of Attorney, Plaintiff's Exhibit "C," dated June 28, 1901, signed by Mollie Conklin, and Emily M. Reddy. Acknowledged on the 28th day of June, 1901, before Thomes S. Burnes, Notary Public at San Francisco, California.

Power of Attorney, Plaintiff's Exhibit "E," dated Feb. 28, 1901, signed by Mollie Conklin, Edward A. Reddy and Emily M. Reddy. Acknowledged on the 28th day of February, 1901, before Thomas S. Burnes, Notary Public at San Francisco, California.

Power of Attorney, Plaintiff's Exhibit "F," dated April 3d, 1901, signed by Mollie Conklin, Edward A. Reddy and Emily M. Reddy. Acknowledged on the 3d day of April, 1901, before Thomas S. Burnes, Notary Public at San Francisco, California.

Power of Attorney, Plaintiff's Exhibit "G," dated

Sept. 19, 1900, signed by Mollie Conklin, Edward A. Reddy and Emily M. Reddy. Acknowledged on the 1st day of March, 1901, before Geo. S. Young, Notary Public at San Francisco, California.

Power of Attorney, Plaintiff's Exhibit "H," dated Feb. 28, 1901, signed by Mollie Conklin, Edward A. Reddy and Emily M. Reddy. Acknowledged on the 28th day of February, 1901, before Thomas S. Burnes, Notary Public at San Francisco, California.

Power of Attorney, Plaintiff's Exhibit "I," dated Sept. 19, 1900, signed by Mollie Conklin, Edward A. Reddy and Emily M. Reddy. Acknowledged on the 1st day of March, 1901, before George S. Young, Notary Public at San Francisco, California.

Power of Attorney, Plaintiff's Exhibit "J," dated Sept. 19, 1900, signed by Mollie Conklin, Edward A. Reddy and Emily M. Reddy. Acknowledged on the 12th day of February, 1901, before George A. Young, Notary Public at San Francisco, California. [434]

Power of Attorney, Plaintiff's Exhibit "K," dated Sept. 19, 1900, signed by Mollie Conklin, Edward A. Reddy and Emily M. Reddy. Acknowledged on the twenty-sixth (26) day of September, 1900, before Holland Smith, Notary Public at San Francisco, California.

Power of Attorney, Plaintiff's Exhibit "L," dated Sept. 19, 1900, signed by Mollie Conklin, Edward A. Reddy and Emily M. Reddy. Acknowledged on the 26th day of September, 1900, before Holland Smith, Notary Public at San Francisco, California.

Power of Attorney, Plaintiff's Exhibit "M," dated Sept. 19, 1900, signed by Mollie Conklin and Emily

M. Reddy. Acknowledged on the 16th day of September, 1901, before Thomas S. Burnes, Notary Public at San Francisco, California. [435]

Complainants' Exhibit "N."

(Copy)

CAMPBELL, METSON & CAMPBELL,

Attorneys at Law,

115 to 122 Crocker Building,

San Francisco.

December 11, 1901.

Mrs. A. R. Conklin,
Bakersfield, Cal.

Dear Madam:

Enclosed please find letter which I have just received from Mr. Benson, which explains the situation exactly. I had quite a talk with him over the phone, and he says that if you can get anyone to take this land at \$4.00 an acre in its present situation, and do better than he can, he is willing to give it up. If you or your son think you can handle this land better than it is being handled now, I suggest that you purchase Mrs. Reddy's interest in it and pay for the same, and then you can handle it to suit yourselves, without any interference by the Courts or anyone else. Probably you can work this through the people who are so anxious to buy the land at the present time. At present I can see nothing better than to let Benson work it out, as it seems to have gotten into a snarl. It seems that we cannot get the deeds back from the Government, and have not yet been able to have them approve the selections. This being the

fact, we are willing to do anything we can to facilitate the matter, and as I have said before, if the people whom you have in view will purchase this land in this situation, we would be willing to let them have it at once.

Yours,

J. C. CAMPBELL.

Enc.

Filed Jan. 17, 1910. A. L. Richardson, Clerk U. S. Circuit Court. [436]

Complainants' Exhibit "N-1."

(Copy)

John A. Benson,
Engineer, Etc.

San Francisco, Cal., December 11th, 1901.

Hon. J. C. Campbell.

Dear Sir:—

Agreeable to your request made to me this morning, I submit you the following statement regarding the Forest Reserve basis which you placed in my hands for disposition belonging to Mollie Conklin and the Reddy Estate.

All of the land, except 400. acres, has been deeded to the United States, and deeds placed upon record, and selections made of other land in accordance with the provisions of the Act of Congress of June 4, 1897 (30 Stats., 36).

This was all, or nearly all, located for parties who were desirous of securing title to unoccupied government lands of the United States, under the provisions of contracts or agreements which in terms provided

that after the land selected in lieu of the land surrendered had been located and said location had been accepted by the Commissioner of the General Land Office, and proper evidence furnished thereof, that the parties in whose interests the locations were made would, upon the delivery of a deed conveying the right of the owners, pay the amounts agreed upon.

Up to the present date there has not been a single location accepted by the Commissioner of the General Land Office. It is my intention just as soon as these acceptances can be had to ask for a confirmation of the sales by the Court so that settlements can be made to both the owners and the parties in whose interests the locations were made. We have been bringing every effort to bear to get the Commissioner of the General Land Office to act upon these matters, and as he has lately added several to the [437] working force in his office it is likely we will not have very much longer to wait.

I can cite a case—a location wherein you are interested—wherein the locations were made long prior to these; that is the locations made for Mr. L. E. Hanchett, lying partly in this State, in the Independence District, and partly in the State of Nevada. Those in the Independence District have recently been approved, while those in Nevada have not yet been reached.

The Commissioner also refuses to allow the withdrawal of selections already made until the present ones are acted upon, giving as a reason in similar instances, that the locator might desire to select more

valuable lands than those selected at present.

At the time these locations were made there was little or no sale for Forest Reserve direct except upon the condition that it were accepted by the Commissioner of the General Land Office. At present if we could only get back the deeds given to the United States there would be little difficulty in disposing of the land.

I have employed counsel specially at Washington to try and secure these approvals and just as soon as obtained, so as to get confirmation of sales will report promptly.

I regret exceedingly these complications, but I had no reason to expect them, as at the time the locations were made approvals were progressing rapidly. I have many times this amount of locations in my own business delayed in a similar manner.

Very respectfully,

JOHN A. BENSON.

Filed Jan. 17, 1910. A. L. Richardson, Clerk U. S. Circuit Court. [438]

Complainants' Exhibit "O."

(Copy)

CAMPBELL, METSON & CAMPBELL,

Attorneys at Law,

115 to 122 Crocker Bldg.,

San Francisco.

January 29, 1902.

Mr. N. E. Conklin,
Bakersfield, Cal.

Dear Sir:—

Yours of the 28th at hand. I do not exactly under-

stand or comprehend the proposition which you make. Is it that a man wants to step into Benson's shows and take this property to sell, and pay us the money as fast as he sells it, or what? Will he buy Mrs. Reddy's land outright and take his chances? Who is the man? I want to know all about it before I would be willing to make any proposition pro or con. I wish you would find someone that would buy Mrs. Reddy out of the entire matter, and then let this man and yourselves take it up. I apprehend that more money than \$4.00 an acre might be made out of it by people who could handle it properly, but it is in the Estate and we are not situated to handle it as it ought to be.

Yours very truly,

J. C. CAMPBELL.

Filed Jan. 17, 1910. A. L. Richardson, Clerk U. S. Circuit Court. [439]

Complainants' Exhibit "P."

(Copy)

CAMPBELL, METSON & CAMPBELL,

Attorneys at Law,

115 to 122 Crocker Bldg.,

San Francisco.

October 27, 1902.

Norman Conklin, Esq.,

Bakersfield, Cal.

Dear Sir:—

Your letter of late date to Mrs. Reddy, has been shown me.

You evidently have forgotten that I wrote you some

months since stating to you that the moment that you could do any better with the Monache property than we are doing, you were at liberty to do so. I also wrote to your friend there who said he could dispose of the property and told him that we were willing to let him do so, and that so far as the matter being in the hands of Mr. Benson, it was not in such a way but what it could be taken out at once.

Now, if you can do any better, you are at perfect liberty to do so; and not only that, but we will join with you in the endeavor to get the most for the property and dispose of it at as early a date as possible; but I would suggest that after you have been so informed, you do not annoy your Aunt Em. by a letter of the character that yours of the 15th is.

If you look up your correspondence, you will find what I say to be true.

Very truly yours,

J. C. CAMPBELL.

I do not think it wise that Mr. Conklin should send any written snarls. If he can and will do something it would please me. However, I don't think he should unnecessarily annoy Mrs. Reddy whatever his views.

W. H. METSON.

Filed Jan. 17, 1910. A. L. Richardson, Clerk.
[440]

Complainants' Exhibit "Q."

(Copy)

CAMPBELL, METSON & CAMPBELL,
Attorneys at Law,
115 to 122 Crocker Building,
San Francisco.

San Francisco, November 7, 1902.

N. E. Conklin, Esq.,
Bakersfield, Cal.

Dear Conklin:—

Replying to your letter of October 15th, 1902, which was delayed in reaching me: The matter that you refer to never was in the office of Campbell, Metson & Campbell, so far as Metson was concerned. I have never taken any part in the matter, except to make some enquiries from time to time and state the matter to Mr. J. C. Campbell, and Mr. J. C. Campbell is anxious to get rid of the affair and reports that advances have been made and costs paid out. The thing for you to do, I take it, is to come to San Francisco, see Mr. Campbell and have the matter straightened out.

Yours truly,

W. H. METSON.

Filed Jan. 17, 1910. A. L. Richardson, Clerk U. S.
Circuit Court. [441]

Complainants' Exhibit "R."

(Copy)

Bakersfield, Cal. June 13th, 1902.

Bank of California,

San Francisco, Cal.

Gentlemen:

In regard to the deeds placed in escrow with your bank in connection with sale of lands between my mother Mollie Conklin and John A. Benson, will you please send me a statement of moneys received?

My mother is in the East and I have a general power of attorney, which I will mail for your inspection, if you desire, or you can mail a statement to her address in San Francisco, which is the Hotel Savoy.

Respectfully,

.....

Filed Jan. 17, 1910. A. L. Richardson, Clerk U. S. Circuit Court. [442]

Complainants' Exhibit "S."

Jun. 14, 1902.

Bakersfield, Cal., June 13th, 1902.

Anglo-California Bank,

San Francisco, Cal.

Gentlemen: Please send me a statement of moneys received on account of deeds placed in escrow with your bank in regard to lands concerned between myself and John A. Benson,

Respectfully,

MOLLIE CONKLIN.

By N. E. CONKLIN.

Please give us more particulars, we cannot locate such escrow on our books.

ANGLO

J. B.

Filed Jan. 17, 1910. A. L. Richardson, Clerk U. S. Circuit Court. [443]

Complainants' Exhibit "T."

RECOVATION OF POWER OF ATTORNEY.

(Copy)

KNOW ALL MEN BY THESE PRESENTS, That I, Mollie Conklin, a widow of the City and County of San Francisco, State of California, do hereby wholly revoke, cancel and annul, any, all and every Power of Attorney, and any Authority of Agency of every description, of any kind or any nature, executed by me, or claimed to have been executed by me, and all that show, or claim to be irrevocable on their face, are cancelled and annulled and denounced as fraudulent, particularly one given or in name of C. L. Hevey.

No person whosoever, is authorized to act for me or in my place or stead, excepting N. E. Conklin, of the City of Bakersfield, County of Kern, State of California, who holds a Power of Attorney from me, and which Power is excepted from this revocation.

MOLLIE CONKLIN. [Seal]

State of California,

County of Kern,—ss.

On this 3d day of January, A. D. 1903, before me, A. C. Maude, a Notary Public in and for said county and state, residing therein, duly commissioned and

sworn, personally appeared MOLLIE CONKLIN, a widow, known to me to be the person whose name is subscribed to the within instrument, and she acknowledged to me that she executed the same.

Witness my hand and official seal.

[Notarial Seal] A. C. MAUDE,
Notary Public in and for Kern County, State of Cali-
fornia.

Filed Jan. 17, 1910. A. L. Richardson, Clerk U. S.
Circuit Court. [444]

Complainants' Exhibit "U-1."

(Copy)

To John A. Benson, Esq.,
No. 507 Montgomery Street,
San Francisco, Cal.

Dear Sir:—

I hereby tender payment to you of the sum of twenty-seven hundred and fifty dollars (\$2750.00), the same being money which I have received from you under a misunderstanding upon my part, of the true status of affairs in relation to certain lands known as the Monache lands, and which said moneys was paid to me under misrepresentations of said affairs and misstatements of the true facts, and I now offer to pay the same to you.

Said money will be paid to you or your order upon your clearing the title to the said lands, which title you have attempted to cloud, and this also includes equities in lands and lieu lands arising from said lands.

Said money will be paid to you upon your notifica-

tion to me that you have so cleared said titles, and after my investigating the same, by the Canadian Bank of Commerce at San Francisco, Cal.

Respectfully yours,

MOLLIE CONKLIN.

Dated at Bakersfield, Kern County, Calif., this 28th day of April, 1903.

(L. mailed April 30th, 1903, letter addressed as above.)

Filed Jan. 17, 1910. A. L. Richardson. Clerk U. S. Circuit Court. [445]

Defendants' Exhibit "A."

THIS INDENTURE, made this 19th day of May, in the year of our Lord, One Thousand Nine Hundred Three, by and between E. B. Weirick, Trustee, of Butte, Montana, the party of the first part, and the Payette Lumber and Manufacturing Company, a corporation duly organized and existing under and by reason of the laws of the State of Minnesota, the party of the second part.

WITNESSETH, That the said party of the first part, for and in consideration of the sum of One Dollar to him in hand paid by the party of the second part, the receipt of which is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, its successors and assigns, forever, All the following described Real Estate, situate in Boise County, State of Idaho, as follows, to-wit:

“Conveys lands described in the decree and other

lands; description omitted pursuant to stipulation of counsel.”

TOGETHER with all and singular the tenements, hereditements and appurtenances thereunto belonging, or in any wise appurtenant, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law and in equity of the said party of the first part.

TO HAVE AND TO HOLD all and singular, the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and its successors and assigns, forever. And the said party of the first part, and his heirs, and assigns, and the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against the said party of the first part, and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant AND BY THESE PRESENTS FOREVER DEFEND.

[446]

IN WITNESS WHEREOF, I, said E. B. Weirick, trustee, being so first authorized, empowered and directed by each and every of the parties for whom said trust is held, have hereunto set my hand and seal the day and year first above written.

E. B. WEIRICK,
Trustee.

State of Montana,
County of Silver Bow,—ss.

On this 22d day of May, in the year of 1903, before

me John S. Dutton a notary public in and for said County and State, personally appeared E. B. Weirick, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same by the authority and at the direction and request of the persons for whom said trust was by him held.

IN WITNESS *HEREOF*, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate first above written.

[Seal]

JNO. S. DUTTON,

Notary Public in and for County of Silver Bow,
Montana.

My Commission expires December, A. D. 1905.

Filed June 25, 1910. A. L. Richardson, Clerk.

[447]

*In the United States District Court for the District
of Idaho, Southern Division.*

IN EQUITY—No. 49.

UNITED STATES,

Complainant,

vs.

PAYETTE LUMBER & MANUFACTURING
COMPANY, a Corporation, JOHN A. BEN-
SON, JOSEPH C. CAMPBELL, R. M. COB-
BAN, E. B. WEIRICK, and E. B. WEIR-
ICK, Trustee,

Defendants.

IN EQUITY—No. 255.

MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually
and also as Trustee, PAYETTE LUMBER &
MANUFACTURING COMPANY, a Corpo-
ration, JOHN DOE, MARY DOE, RICH-
ARD ROE and THOMAS ROE,

Defendants.

Opinion.

(Two Cases Consolidated as No. 60.)

C. H. LINGENFELTER, U. S. Attorney, and S. L.
TIPTON, Assistant U. S. Attorney, Solicitors
for United States.

N. E. CONKLIN and W. B. DAVIDSON, Solicitors
for Complainant, Mollie Conklin.

RICHARDS & HAGA and McBRIDE & McBRIDE,
Solicitors for Defendants Cobban and Weirick.

CAVANAUGH & BLAKE, Solicitors for Defendant
Payette Lumber and Manufacturing Company.

A. A. FRASER, Solicitor for Defendant, Joseph C.
Campbell. [448]

DIETRICH, District Judge:

The United States and Mollie Conklin bring separate actions calling into question the same general controversy, and involving the same general state of facts. The suits were consolidated for trial, and have now been submitted together. There is great

similarity in the averments of the two bills, but the prayers are wholly different, the demands being, in the one case, that the United States be adjudged the true owner of 3767 acres of timber lands situate in Boise County, Idaho, and in the other that Mollie Conklin be decreed an undivided half interest in the same land. A similar bill relating to California lands, but involving the same transactions, was exhibited by the Government in the United States Circuit Court for the Northern District of California, which, upon demurrer, was dismissed for want of equity, and, upon appeal to the Circuit Court of Appeals, the judgment of the lower court was affirmed. *United States vs Conklin*, 169 Fed. 177; 177 Fed. 55. The facts here disclosed by the evidence are, to say the least, no more favorable to the Government than were the averments there held to be insufficient, and upon the authority of that case its bill must be dismissed.

The parties defendant in the remaining suit are R. M. Cobban, E. B. Weirick, and the Payette Lumber and Manufacturing Company, a corporation. Title to the lands referred to was conveyed jointly to the plaintiff and the estate of Patrick Reddy, deceased, by the United States, whereupon the defendant Cobban, assuming to act under powers of attorney purporting to have been executed in his favor by the plaintiff and the legal representatives of the Reddy estate, transferred the same to Weirick, as trustee, who, in turn, conveyed them to the defendant corporation. The plaintiff prays that these powers of attorney be held to be void and of no effect, and that

she be adjudged to be the owner of an undivided one-half interest in the lands, and for general relief. The salient facts will now be stated. [449]

Some time prior to the year 1900 Alvah Russell Conklin, the plaintiff's husband, acquired title to lands aggregating approximately 9600 acres, situate in Inyo and Tulare counties, California, and referred to in the record as the "Monache lands." He conveyed an undivided one-half interest therein to Patrick Reddy, his brother-in-law, who was a member of the law firm of Reddy, Campbell & Metson, of San Francisco. Subsequently, and before the year 1900, the lands were included within the Sierra Forest Reserve. Under a general act of Congress, the owners of such lands, by complying with certain conditions, were authorized to exchange them for other public lands subject to settlement. To make such exchange it was requisite that the owner execute a deed conveying the reservation lands, sometimes referred to as the "base," to the United States, and have such deed recorded in the proper county recorder's office, and thereafter file the same, together with an abstract showing a clear and unincumbered title in the United States in the land office, together with an application to select other specifically described land and in lieu thereof, such other land being generally referred to as "lieu" land.

Both Conklin and Reddy died prior to the transactions in 1900 out of which this litigation grows, and their estates were in the process of administration. For some years prior to the death of Reddy, J. C. Campbell was his partner, and upon his death

the firm continued as Campbell, Metson & Campbell, and either he personally or his firm acted as counsel for both the Reddy and the Conklin estates. John A. Benson, residing at San Francisco, appears to have been a land agent or attorney, and to have been engaged on a comparatively large scale in dealing in land scrip, and in securing title to public lands. He had discussed with Reddy the matter of purchasing his (Reddy's) interest in these lands, but the negotiations were cut short by the latter's death. In the early part of the summer of 1900 both the plaintiff, Mollie Conklin, who had in the meantime succeeded to the interest of her deceased husband, and the [450] representatives of the Reddy estate, which was still in process of administration, being desirous of disposing of the Monache lands, a meeting of the several parties with Benson was arranged for at the office of J. C. Campbell. As to the question whether or not there was more than one meeting at which the plaintiff was present, and as to just what occurred, or was finally agreed upon, the evidence is highly conflicting. There seems, however, to be no doubt that at one meeting, at which an understanding was practically arrived at, the plaintiff and her son, who was a young lawyer, Benson, Campbell, and Reddy's widow, who was also one of the representatives of the Reddy estate, were present. Putting aside for the moment the disputed details, the understanding then reached was that the owners were to dispose of the Monache lands for the agreed price of \$3.80 per acre. Plaintiff's version is that this meeting took place in the month of August, 1900, and that the agreement was that Benson should purchase the

lands at the price named, such purchase to be completed and the full amount of the purchase price paid within ninety days. Deeds were to be executed and placed in escrow, with instructions to deliver to Benson upon the payment of the purchase price. Upon the other hand, Benson's testimony is to the effect that it was not understood that he was to purchase the base land outright, but that it was to be exchanged for other land, as provided by law, and that he was to make payment only when the titles were approved by the proper Government officials. The truth probably is that, upon the one side, the plaintiff, not being familiar with the procedure by which base lands are exchanged for lieu lands, gave little attention to, and did not understand, such explanations as may have been made by Benson, and went away with the impression only that Benson was to purchase, and that she was to deed to him directly, her interest in the base lands. Upon the other hand, Benson, being advised of the conditions under which base lands could be handled and [451] exchanged, and being familiar with the procedure, understood that the owners would execute, and, in due time, deliver such papers as were necessary to make the exchange and transfer. The plaintiff wanted to sell the lands and was interested particularly in procuring the desired price. Being concerned only with the ultimate result, she probably gave very little thought to the means by which that result would be reached. In view of the entire record, it is wholly improbable, and I am unable to conclude, that Benson agreed or that he understood, that he would directly purchase the base lands, or that deeds from

the then owners were to convey the title to him personally.

At this point it should also be stated that the record discloses a direct conflict upon the question as to whether or not, in the negotiations leading up to the agreement referred to, and in making the agreement, and in the subsequent transactions still to be related, Campbell was acting in the capacity of attorney for the plaintiff. It is her contention that he was so acting, but by him such relation is emphatically disclaimed. As already stated, he or his firm had been acting for her, as the representative of the Conklin estate, and he was at the time the attorney for the representatives of the Reddy estate, but there is no positive or strong circumstantial evidence tending to support the plaintiff's contention that he or his firm consciously acted in such capacity for her personally in this or any other matter. In view of the fact that Campbell had been associated with her brother-in-law, Reddy, and that her son had studied law in his office, and that he, Campbell, or his firm, had, up to the very time of the meeting, acted as counsel for the estate of her deceased husband, she doubtless entertained great confidence in him, and it is entirely probable that she expected him to protect her interests, without giving any thought to the question whether or not he had been expressly retained for that purpose. Upon the other hand, from the entire record, I have concluded that Campbell himself did not understand that he was, in [452] a technical sense, acting as her attorney. While at times he appeared to render

services to the plaintiff in connection with the matter, it is to be borne in mind that he was all the time attorney for the Reddy estate, and that the Reddy estate owned an undivided one-half interest in the property, and the interests of the estate as against Benson were therefore identical with those of the plaintiff. In other words, in properly caring for and protecting the interests of the Reddy estate, Campbell could not well avoid the appearance of also protecting the interests of the plaintiff.

It seems to have been understood that upon being furnished with the necessary data, Benson would, at his own expense, procure abstracts of title, and draft the necessary instruments to effect the exchange, and, a short time after the meeting referred to, he caused to be sent to Campbell's office numerous papers, with the request that they be executed. At this point the evidence is very fragmentary and very unsatisfactory. Campbell apparently had an extensive practice, and the details of the business were left to assistants and clerks in the office. The papers thus prepared by Benson and delivered at Campbell's office upon two different occasions were apparently taken by one of the clerks or office boys to the plaintiff and Mrs. Reddy for execution. The testimony of the plaintiff is that the first group was brought to the home of Mrs. Reddy, where she, the plaintiff, was temporarily staying. They hastily scanned some of them, and then, concluding that they would not have been sent for signature unless they had Campbell's approval, they signed them and turned them back into the hands of the messenger.

The number of the papers is not disclosed, but there were many of them. Later on another bunch was presented to the plaintiff by someone whom she recognized as being connected with Campbell's office, at a hotel in San Francisco, where she was temporarily staying, and these she signed in the same way and upon the same assumption. Campbell himself testifies that he personally took the notary public to the hospital and there procured the [453] execution of certain of the papers by one of the Reddy representatives, who was ill at the time. Unfortunately, before the evidence was taken in this case, both of the representatives of the Reddy estate and the notary public died.

Subsequently, from time to time, but under just what circumstances, or how often, or when, does not appear, these papers came into Benson's hands, and they now appear to have consisted of a large number of deeds conveying the base lands to the United States, and an equal number of applications, signed by the owners of the base lands, for the selection of lieu lands, a like number of instruments empowering some undesignated person to make selections of lieu lands, and also an equal number conferring upon designated persons irrevocable authority to convey the title or titles of the lieu lands to purchasers thereof. It seems that, under the prevailing rules of the land department, the right to make selections of lieu lands was held to be non-assignable, and therefore patents always issued to the grantors of the base lands. It consequently became necessary either for such grantors to make

a conveyance to the purchasers, or to authorize an attorney in fact to make such conveyance, and the instruments referred to seem to have been such as were sometimes used to make the necessary transfer complete.

All of these deeds and powers of attorney were signed by the plaintiff and the two representatives of the Reddy estate, and, from the notarial certificate attached, appear to have been duly acknowledged before a notary public. The plaintiff testifies that she never appeared before a notary public or acknowledged any one of the instruments, and that in that respect the certificates are all false. In this position she is strongly corroborated by other evidence, and upon the whole record there is left no room for doubt that her testimony is true.

During the years from 1900 to 1903 the defendant Cobban resided at Missoula, in the State of Montana, and was engaged in [454] the real estate business which was being conducted by a corporation bearing his name. In 1900 and 1901 he and a number of other persons in Montana associated themselves together for the purpose of assembling and placing upon the market titles to valuable timber lands, Cobban being put forward as the active agent of the association. Neither Cobban nor his associates personally knew Benson, Campbell, Cenkin, or Reddy, but, in some manner learning of Benson's possession of the Monache scrip, Cobban negotiated for the purchase of several lots thereof, aggregating approximately 3,723.52 acres, by mail, for the purpose of enabling him and his associates

to acquire the title to the lands now in controversy, which were at the time public timber lands of the United States. The scrip was purchased in the ordinary course of business, and at the going price, namely, \$4.00 per acre. From time to time as the scrip was needed, Cobban ordered it from Benson, and the same was sent to a designated bank, either at Butte, Montana, or Boise, Idaho, where the papers were examined by Cobban or his representative, and they being found to be satisfactory, the purchase price was paid into the bank, and the scrip delivered to the purchaser. This scrip, as it will be understood, was made up of substantially the papers executed by the owners of the base lands as hereinbefore detailed. After purchasing the scrip, Cobban inserted in the blank application to select lieu lands a description of the lands by him selected, and also inserted in one of the powers of attorney such description, together with his own name, and thereupon the papers were filed in the proper land office, and if the same were, upon examination, found to be satisfactory by the Land Department, and the exchange was approved, patent issued, conveying title to the selected lands to the plaintiff and the representatives of the Reddy estate. Upon the issuance of such patent, Cobban, exercising the authority which he assumed he had, as holder of the scrip, either wrote, or caused to be written, his own name in the powers of attorney which had been signed in blank by the [455] plaintiff and her co-owners, and thereupon executed a deed in the name and upon behalf of the plaintiff and the rep-

representatives of the Reddy estate, conveying such patented selected land to the defendant Weirick, as trustee, Weirick having been chosen by his associates as their representative, to take the title. Thereafter, Cobban's association having effected a sale of all of the lands thus acquired, Weirick, as such trustee, acting upon behalf of his associates, and with their approbation, for a valuable consideration transferred the title to the purchaser, the defendant, Payette Lumber & Manufacturing Company, in whose name, as has already been stated, the title now stands.

Plaintiff charges that Benson, Campbell, and the defendants, conspired together to defraud her, that she has never been paid the stipulated price, that she unwittingly attached her signature to the papers constituting the scrip, that she never in fact acknowledged the execution of any such papers, that their delivery to Benson was unauthorized and without her knowledge or consent, and that the powers of attorney, when delivered to Cobban, being blank as to the name of the person authorized to exercise the powers, were ineffective for any purpose, and therefore conferred no authority upon Cobban to execute any deed or other conveyance.

We may put aside as being immaterial the fact that the notarial certificates attached to the instruments constituting the so-called "scrip" sold to Cobban were false, in that the plaintiff never appeared before a notary public or made any acknowledgment at all; as between the parties acknowledgment was not essential to their validity.

So also it is thought not to be highly important to determine whether, by the original agreement, it was contemplated that title to the base lands should be conveyed directly to Benson, as is asserted by the plaintiff, or was to be relinquished to the United States substantially in the manner testified to by Benson and Campbell. In either view, the [456] plaintiff must have understood that, for a certain specified price, she was to alienate all of her interest in the lands, and, that being the case, the mere fact that the conveyances ran to the United States, and not to Benson, in itself furnishes no adequate ground for the interposition of a court of equity. *United States vs. Conklin*, 169 Fed. 177; affirmed, 177 Fed. 55. *Conklin vs. Cobban* (Cal.), 116 Pac. 34. Moreover, there is no substantial foundation for the charge, elaborated at great length in the bill, that Benson, Campbell, Weirick, Cobban and others, conspired to defraud the plaintiff. So far as Cobban and Weirick are concerned, together with their associates and the promoters and officers of the defendant, Payette Lumber & Manufacturing Company, it is enough to say that there is no basis for a suspicion even that they purported to defraud, or consciously participated in any scheme or conspiracy to defraud either the United States or the plaintiff. They purchased the scrip by mail in due course of business, were not acquainted with either Benson or Campbell, and had no knowledge of the facts of which the plaintiff now complains. While there is much in the record to support the view that Campbell failed to properly discharge his obligations

to the plaintiff, it cannot be held that he conspired with Benson, or at any time entertained corrupt or improper motives. Such delinquency as in law may be properly charged against him is to be attributed to a want of personal attention upon his part, and either to his neglect to give definite instructions to his subordinates, to whom, in a measure, he intrusted the business, or to their disregard of his instructions, rather than to any design or willingness to wrong the plaintiff; I am satisfied that there was no evil intent. That Campbell owed some duty to the plaintiff cannot be controverted. She intrusted to his keeping the instruments of conveyance which were executed jointly by her and the representatives of the Reddy estate, either because she regarded him as her attorney, or because, recognizing him as the [457] attorney for the Reddy estate, and reposing great confidence in him, she assumed that he would deliver the instruments only in accordance with the agreement, of the terms of which he was fully advised. Whether formally employed as an attorney or not, having, with full knowledge of the conditions upon which they were to be delivered to Benson, received the instruments, it was his duty either to return them to plaintiff or to comply with such conditions. This, however, is not an action to determine Campbell's liability, nor is he made a party defendant, and therefore the precise nature of his relation to the plaintiff is material only insofar as it bears upon the effect upon the plaintiff's rights, of the unauthorized and improper delivery of the instruments through his office

to Benson, and by Benson to the defendants who purchased them for value and without knowledge of any wrongdoing. And in disposing of that issue, we may dismiss from our consideration all those instruments used merely in effecting an exchange of lands with the United States. Such are the deeds executed in favor of the United States, the application to select lands in lieu of those relinquished, and powers of attorney authorizing the making of such selections. This suit is based upon the theory that the plaintiff is entitled to the fruits of the exchange, namely, the lands patented to her by the United States in consideration of her relinquishment of title to the base lands, and therefore it may be held that, by prosecuting the suit, the plaintiff has ratified all proceedings relating to such exchange. There is, however, no evidence to support the theory that the plaintiff ever authorized or ratified the delivery of any power of attorney "to convey," without the prior payment to her of the full purchase price agreed upon. Whether we accept the theory of the plaintiff or that of the defense,—whether the understanding was a transfer directly to Benson of the Monache lands or an exchange thereof with the Government, and thereupon a transfer of the lieu lands to Benson or such person as Benson might [458] designate,—according to all of the testimony, payment of the agreed price was to precede the delivery of the instruments effecting a transfer of the title or the control of the title, from the plaintiff. Such is the testimony of the witnesses for the plaintiff, Campbell, in the most emphatic terms, so

declares, and Benson, in effect, admits that such was the understanding. It is true, I think, that, when she signed the large number of documents sent to her from Campbell's office, the plaintiff acted without fully understanding their legal import, but even if it be held that, having voluntarily attached her signature, she is chargeable with an understanding of their meaning and legal effect, it still remains true that neither expressly nor impliedly did she authorize their delivery to Benson. Campbell testifies that it was not his understanding that such instruments were ever to be executed, and that personally he was wholly unaware of their existence until after this suit was commenced. He never saw them, and did not deliver them to Benson or authorize their delivery. Benson ventures no explanation and advances no theory in justification of their delivery to him. In some way, it does not appear just how, they all reached his office bearing false notarial certificates of acknowledgment, and came from either Campbell's office or directly from the hands of the notary public. The delivery was made either by the notary or a subordinate in Campbell's office, but whether such delivery was the result of fraudulent collusion or only innocent inadvertence, it was not in accordance with the original agreement, and had the authorization or consent of neither Campbell nor the plaintiff.

It may be said generally that there is nothing in the conduct of plaintiff, unless it be her act of signing the powers of attorney and giving them back into the hands of Campbell's clerk, that can be put for-

ward as a substantial reason why she [459] should be denied equitable relief. She did not know, and had no reason to suspect, that the powers of attorney had been delivered to Benson until long after the Cobban sales had been consummated, and, upon learning of the facts, with reasonable diligence, she executed, and caused to be recorded, in Boise County, Idaho, where the lands are situated, a revocation of such power. This revocation was filed January 16, 1903, five months before Cobban and his associates, through Weirick, their trustee, sold to the defendant, Payette Lumber & Manufacturing Company. Neither expressly nor impliedly has she ratified the delivery of the instruments, and since learning of their delivery she has consistently, and with reasonable diligence, proclaimed her unwillingness to be bound thereby, and has asserted her ownership of the selected lands. If estopped at all, therefore, or barred by laches, such estoppel or bar must be found in the act of signing and sending the instruments back to Campbell's office.

The substantial facts with regard to the payments made to the plaintiff are not in controversy. The amounts paid to her credit on account of the entire transaction aggregate only \$2,750. What, if any, part of this amount should be credited to the Cobban sales is not entirely clear, and is left for later consideration. The scrip sold to Cobban alone covered 3,723.52 acres, on account of which, if we credit the plaintiff at the rate of one-half of \$3.80, or \$1.90 per acre, there became due to her the sum of \$7,074.68. These sales were all made, and the money arising

therefrom, received by Benson, between the 1st day of February and the 1st day of July, 1901.

At the hearing, counsel for the defendants, assuming that plaintiff had declined an offer of full payment, earnestly insisted that it would be extremely inequitable to permit her to refuse substantially that for which she had contracted, and now recover title to these lands from the defendants, who have already in good [460] faith made full payment, and I was inclined to regard such a view with much favor. But upon a most careful search of the record I do not find the assumption of tender well founded. At one point the witness Campbell testified that the plaintiff refused further payments, but the statement is immediately qualified in such a way as to leave it practically worthless. Benson evidently seeks to leave the impression that plaintiff was unwilling to receive payment, but he seems studiously to avoid any direct statement to that effect, and clearly all of his testimony upon the point relates to a time long after he consummated the sales to, and received full payment from, Cobban. It is difficult to harmonize Benson's use of the powers of attorney and his conduct generally with the ordinary standards of honesty and fair dealing. In his letter of December 11, 1901, written to Campbell, in response to the latter's request for a report as to the status of the whole matter, he uses the following language: "All of the land, except 400 acres, has been deeded to the United States, and deeds placed upon record, and selections made of other lands in accordance with the provisions of the

Act of Congress of June 4, 1897 (30 Stats. 36).

“This was all, or nearly all, located for parties who were desirous of securing title to unoccupied government lands of the United States, under the provisions of contracts or agreements which in terms provided that after the land selected in lieu of the lands surrendered had been located and said locations had been accepted by the Commissioner of the General Land Office, and proper evidence furnished thereof, that the parties in whose interests the locations were made, would, upon the delivery of a deed conveying the right of the owners, pay the amounts agreed upon.

“Up to the present date there has not been a single location accepted by the Commissioner of the General Land Office. [461] It is my intention just as soon as these acceptances can be had to ask for a confirmation of the sales by the Court so that settlements can be made to both the owners and the parties in whose interests the locations were made. We have been bringing every effort to bear to get the Commissioner of the General Land Office to act upon these matters, and as he has lately added several to the working force in his office it is likely we will not have very much longer to wait.”

Clearly, he thus intended to give the impression that the original owners still controlled the title, and that no money had been paid by the purchasers, and that payment would be made only upon the delivery of proper deeds by the original owners, whereas in truth the fact was that, months prior thereto, he had received, in installments, the full

purchase price for the scrip covering all of the lands described in the bill, and had delivered to Cobban the several powers of attorney purporting to authorize the transfer of title from the plaintiff and the Reddys to unnamed purchasers. By implication the letter recognizes the correctness of the plaintiff's contention, that she was to convey title only upon receiving payment in full, and the fact was concealed that the instruments now under consideration were in existence at all. There were doubtless some negotiations looking to a settlement of the whole controversy, and not improbably Benson conditionally offered to make certain payments, but there never was an unconditional or actual tender to the plaintiff of what was clearly due her upon account of the Cobban sales. From the record the inference is unavoidable that, if Benson had, during the year 1901, or during the larger part, at least, of the year 1902, offered to account for and pay over the moneys arising from the Cobban sales, he would have been met with no hesitation upon the part of the plaintiff in accepting payment, but, as appears from the letter above referred to, he was putting her demands for [462] payment off by evasion and deception. After the plaintiff learned, through inquiries prosecuted by her son, in the year 1902, that her understanding of the agreement was being violated, and especially when it appeared that Benson had come into possession of, and had improperly disposed of, the powers of attorney to convey, not without reason she looked with suspicion upon, and was reluctant to accept, offers of partial payment.

She had a right to know the facts, and this knowledge was denied to her. Benson declined to discuss the matter except through or with Campbell, and Campbell, for some reason, was very difficult of access. It may be conceded that had the plaintiff and her son gone about their investigation in a more direct way, and had they insisted upon getting Benson and Campbell together, and upon having a full and comprehensive report upon the whole transaction, certain unfortunate misunderstandings might have been avoided, and possibly a satisfactory settlement secured, but in passing criticism upon the course pursued we must adjudge the conduct of the plaintiff and her son in the light which they then had rather than in the light of the facts later disclosed. Not without some apparent reason, they doubtless entertained a suspicion that Benson and Campbell were in collusion for some purpose antagonistic to their interests, and that it would be useless, if not perilous, to advise them of such suspicion until certain facts had been learned from disinterested sources. While the course pursued is not free from criticism, it is not thought to be such as should debar the plaintiff from seeking relief in a court of equity. It may be thought that the fact that the Reddys were paid much larger amounts than were paid to the plaintiff tends strongly to corroborate the theory that plaintiff refused to accept payment, but it seems that from time to time Campbell, putting forward the needs of Mrs. Reddy for money, strongly urged Benson to make advances to her. Campbell testified that he understood that [463]

the moneys so paid were not the proceeds of sale, but were advanced from time to time by Benson, in anticipation of such sales, and in view of the statements contained in Benson's letter of December 11th, it is not improbable that from time to time he led Campbell to believe that, under the contract, there was nothing legally due from him, and that the payments which he made were to be understood as advancements only. In that view, Campbell was justified in turning over to Mrs. Reddy alone such sums as he received, for they were by Benson paid to her credit exclusively, whereas it was his duty to distribute equally between her and the plaintiff all proceeds arising from the sales of lands.

We are thus brought to a consideration of what seems to be the controlling issue of the case, namely, to what extent, if at all, is the plaintiff bound by the unauthorized delivery of the blank powers of attorney to convey. The defendant corporation, relying upon the maxim that where one of two innocent persons must bear a loss due to the injurious act of another, he must sustain the loss who has put it within the power of such other person to do the wrong, earnestly insists that, having executed the powers and returned them to Campbell, her agent, the plaintiff must suffer the consequences of their unauthorized delivery. Upon the facts before it, the Supreme Court of California adopted such view in *Conklin vs. Benson*, cited *supra*. It is to be said, however, that while that case involved the same general transactions, the ultimate facts upon which the Court seems to have placed its decision are, in some mate-

rial respects, different from the findings warranted by the present record. In that case it was found that when the powers of attorney were, by Benson, delivered to the purchaser, they were complete, and the inference is drawn that they were in that condition when they left the plaintiff's hands. Here it is conceded that when the plaintiff signed the instruments, and indeed [464] until some time after they were delivered to Cobban, they were blank, at least as to the name of the person authorized to exercise the specified powers. It was further substantially found in that case that all the moneys due on account of the purchase price of the lands had been paid over by Benson to Campbell, and that the delinquency, if any, in making payment to the plaintiff, was with Campbell, the plaintiff's agent, and not with Benson. Here it appears that nothing in excess of \$2,750 on account of the entire transaction was ever paid by Benson to any person, to the credit of the plaintiff. In the third place, in applying the principle of the maxim above referred to, the California court appears to have assumed that Campbell and Benson were the general agents for the plaintiff for the sale of these lands, whereas the record here does not support the theory of such general agency. Again it was there assumed that Campbell, the plaintiff's agent, knowingly delivered the papers to Benson, while here it appears that Benson's possession thereof was without his knowledge or consent.

1. Under all of the circumstances of the case, did the blank powers of attorney operate to confer upon

Cobban power to convey? The answer, it is thought, must be in the negative. The rules by which the validity of a power of attorney to transfer the title to real estate is governed are substantially the same as those which apply to conveyances themselves. If a deed to real estate is executed, with the name of the grantee left blank the deed is inoperative until the name is inserted by some person authorized so to do. Formerly the rule was that such authority must be evidenced in writing, but it is now held in many jurisdictions that parol authority is sufficient. *Devlin on Deeds*, 3d ed., sec. 356. But, as was said by Mr. Justice Field, delivering the opinion of the court, in *Allen vs. Withrow*, 110 [464½] U. S. 119, even where the more liberal rule is recognized, there are still "two conditions essential to make a deed, thus executed in blank, operate as a conveyance of the property described in it; the blank must be filled by the party authorized to fill it, and this must be done before or at the time of the delivery of the deed to the grantee named." Putting aside the question as to the time Cobban inserted his name in the blank instruments, it is sufficient to say that he had no authority at all so to do. If it be conceded that such authority need not be in writing, and that it need not even be expressly conferred, it still remains true that in some manner it must emanate from the grantor. It is not pretended that in the present case the plaintiff, in writing or otherwise, expressly authorized Cobban to act as her agent in this respect, and authority, if any there was, arose by implication alone. But from what

fact or facts can the inference of such authority be legitimately drawn? Where a grantor receives the purchase price agreed upon and delivers a deed, otherwise complete, from these facts alone it may, not improperly, be inferred that he intended to authorize the purchaser to insert the name of the grantee in the blank left for that purpose. Such would be a natural inference. But the plaintiff here did not deliver these papers, nor did she receive the stipulated purchase price. They came into Cobban's possession through the fraud of Benson, either actual or constructive, and without the knowledge or consent of the plaintiff, or of her agent, assuming that Campbell was her agent. She had never heard of Cobban, and, prior to the meeting at Campbell's office, Benson had been a total stranger to her. The payment to, and the receipt by, Benson of the purchase money paid by Cobban gives rise to no implication. It is not the payment of the purchase money by the purchaser, but the receipt by the grantor, that tends to disclose the grantor's intent. Benson had no authority to receive the purchase money for the plaintiff; he was not her agent, and [465] probably never thought of the relation existing between himself and the plaintiff as that of agency. In his transactions with Cobban, he was the vender, and in his relations with the plaintiff he was the vendee or purchaser. Certainly it would be quite as reasonable to hold that he was the agent of Cobban to deliver the purchase money to the plaintiff as to hold that he was the agent of the plaintiff to receive it. My conclusion is that, when Cob-

ban purchased these instruments, he took them at his peril. Upon their face they appeared to be incomplete, and therefore inoperative, and to give them effect it was requisite that the name of a qualified person be inserted by someone authorized so to do. The authority was not conferred by the naked instruments themselves, and Cobban was bound to know that, unless it was evidenced by some writing or express declaration of the plaintiff, he must, if he would rely upon the power which the instruments purported to grant, establish facts from which it could legitimately be inferred. Such facts the record fails to disclose, and the instruments must therefore be held to be inoperative.

2. It is further thought that, aside from the fact that the instruments were in blank, the plaintiff is not bound by their unauthorized delivery. If it be assumed that Campbell directed or consented to such delivery, he acted in violation of his instructions, and transcended his authority. As clearly understood by all parties, Benson was to receive possession of the deeds or other instruments divesting the plaintiff of her title, or putting out of her hands the control thereof, only after he had paid in full the purchase price. I am aware that the line between a general and a special agency is not always well defined, but in no view of the record can it be held that Campbell had the authority of a general agent to bind the plaintiff; his authority was limited to a very narrow scope. The terms of the [466] sale had all been arranged between the principals, in Campbell's presence. Benson was to draft the pa-

pers, and, after their execution, they were to be deposited by Campbell in escrow with the Anglo-Californian Bank, with instructions to deliver to Benson upon receipt of the stipulated amount. While Campbell has no recollection that the papers were so to be placed in escrow, he does remember that it was agreed that payment should be made through the Anglo-Californian Bank. But, if the papers were not to be left with the bank, it is difficult to understand why payment through that particular bank, or, for that matter, through any bank, should have been discussed or considered important. Upon the one side it was doubtless insisted that the conveyances should not be delivered until payment was made, and, upon Benson's side, he doubtless desired assurance of such delivery when he tendered payment, and, altogether, it would seem that a deposit in escrow was a very natural course to pursue, and I am inclined to think that the plaintiff's version of the understanding is correct. Campbell's duties, therefore, were few and simple, and his authority limited; little, if anything, was left to his judgment, and he had no discretion touching the conditions upon which delivery was to be made to Benson. Under the rule of special agency, in dealing with him and accrediting his acts, third persons were bound, at their peril, to take cognizance of the limitations of his authority. "It is believed to be a general rule that an agent with limited powers cannot bind his principal when he transcends his power. It would seem to follow that a person transacting business with him of the credit of his princi-

pal, is bound to know the extent of his authority.” *Schummelpennich vs. Bayard*, 26 U. S. 263; p. op. 290. The power of Campbell was analogous to that of an escrow holder. The understanding was that he should make a deposit of the papers in escrow, and, having failed to comply with that understanding, [467] he must be deemed to have retained them in substantially the capacity of an escrow depositary; certainly his authority to deliver was no greater than would have been the authority of the Anglo-Californian Bank if, in accordance with the agreement, it had received them, under the stipulated instructions. The unauthorized delivery of an escrow deed does not operate to effect a transfer of title. “The great weight of authority sustains the view that an unauthorized delivery of the instrument conveys no title or gives no right, even in favor of an innocent sub-vendee, without notice of the conditions or events stipulated in the escrow contract; and the authorities are very strong where the escrow has been obtained or delivered through fraud. The principle on which the doctrine rests is that an instrument delivered in violation of the terms on which it has been placed as an escrow is not, in fact, delivered, and that its possession by the grantee is no more effective to convey title than would be the possession of a forged or stolen instrument. Some authorities proceed on the theory that a depositary is a special agent of the depositor, and therefore, his powers being limited to the condition of the deposit, one who claims through him takes the risk of the agent exceeding his powers.” 16 Cyc. 581. “Until

the condition has been performed and the deed delivered over, the title does not pass, but remains in the grantor. If the condition is not performed, the grantee, we have seen, is not entitled to the deed. If the depositary deliver the deed without authority to do so from the grantor, or if the grantee obtain possession of it fraudulently, without performing the condition, the deed is void. The deed thus obtained conveys no title either to the grantee or purchasers under him." *Devlin on Deeds*, 3d ed., sec. 322. While not expressly deciding the precise question, the Supreme Court of the United States, in *Provident Trust Company vs. [468] Mercer County*, 170 U. S. 593, 604, distinguishes between the case of a *bona fide* purchaser of negotiable paper, wrongfully delivered by an escrow holder, and that of a purchaser of real estate under similar conditions, seems to quote with approval the language of Chief Justice Bigelow, in *Fearing vs. Clark*, 16 Gray, 74, 76, as follows: "The rule is different in regard to a deed, bond, or other instrument placed in the hands of a third person as an escrow, to be delivered on the happening of a future event or contingency. In that case no title or interest passes until a delivery is made, in pursuance of the terms and conditions upon which it was placed in the hands of the party to whom it was intrusted." Speaking for the Circuit Court of Appeals of the Ninth Circuit, Judge Gilbert, in *Balfour vs. Hopkins*, 93 Fed. 564, uses the following language: "The authorities are not in entire harmony as to the effect of the delivery of a deed which has been left in es-

crow to be delivered to the grantee upon the performance of a condition, and which has been wrongfully delivered before the condition was performed. The decided weight of authority seems to sustain the view that such a delivery is inoperative to convey title, even in favor of an innocent purchaser, without notice, unless the grantor has, by some act or conduct of his own, estopped himself to deny the delivery." In *County of Calhoun vs. American Emigrant Company*, 93 U. S. 124, it was said: "Beyond doubt, the deed of the lands was delivered to the clerk of the respondents as an escrow, and subject to the condition that it should not be delivered to the grantee until they gave a mortgage to secure the full performance of the agreement under which the deed was executed; but it is equally clear that the condition required to be fulfilled before the delivery could be made was never performed, and the rule is established by repeated decisions that, where a deed is delivered as an escrow, nothing passes by the deed unless the [469] condition is performed." See, also, *Knapp vs. Nelson* (Colo.), 92 Pac. 912; *Tyler vs. Cate* (Ore.), 45 Pac. 800; *Bradford vs. Durham* (Ore.), 101 Pac. 897; *Powers vs. Rude* (Okla.), 79 Pac. 89; *Bowers vs. Cottrell* (Idaho), 96 Pac. 936.

3. In the third place, whatever may have been Campbell's authority, he did not knowingly deliver the instruments. In some unexplained manner, they came into Benson's possession, without Campbell's knowledge or consent. Campbell's positive disclaimer of knowledge is corroborated by the facts

and circumstances of the case. It is wholly improbable that, experienced lawyer that he was, he would, knowingly, authorize or acquiesce in the course pursued in this case, and thus needlessly jeopardize the interests of his clients. Whether Benson procured the papers by deception or through the inadvertence of the clerks in Campbell's office, his acceptance and use of them constituted a fraud upon the plaintiff's rights. There was no legal delivery of the instruments, either by the plaintiff or by her agent. *Bowers vs. Cottrell*, 96 Pac. 936.

It is to be added that, while, as has already been said, the defendants are guilty of no moral wrong, and are wholly exonerated from the charges of fraud preferred in plaintiff's bill, it is doubted whether, in purchasing the scrip, they exercised that measure of care required of those who would claim the protection of the maxim which they invoke. To some extent, as testified to by Cobban, the custom may have prevailed of buying conveyances and powers of attorney executed in blank, but, custom or no custom, such purchase is attended with great hazards. However, aside from that feature of the "scrip," we find that these powers of attorney were signed by the administrators of the Reddy estate jointly with the plaintiff, and while this fact was apparent upon the face of the instruments themselves, they were accepted without any [470] inquiry on the part of Cobban as to the legal authority of the administrators to execute them. There was certainly no presumption that these administrators, residing in California, and appointed by, and act-

ing only under, the authority of a California court, had the power to delegate to an unknown agent the authority to convey lands belonging to the estate of their intestate, situate in Idaho. To be sure, this consideration does not relate to the plaintiff's interest in the lands, but if, in the exercise of what would seem to have been ordinary prudence, Cobban had set on foot inquiry concerning the validity of the powers of attorney so far as they concerned the Reddy interests, doubtless he would have discovered facts which would have put him upon his guard as to the plaintiff's rights.

Now, as to the relief to be awarded to the plaintiff. Under the circumstances, our purpose should be to protect her rights in such a manner as will be least injurious to the defendants. To grant that for which she specifically prays might work great and unnecessary hardship to them. It is not improbable that expenses aggregating considerable amounts have been incurred in procuring title to the selected lands, and in caring for the timber growing thereon, and in paying taxes and other charges; nor is it unlikely that the lands are now of a value greatly in excess of the amount due to the plaintiff under her contract with Benson. It would therefore seem to be inequitable to award to the plaintiff property the value of which is, in a large measure, the fruit of the defendant's expenditure, foresight and care. If the plaintiff receives the amount which Benson should have paid to her, she will have suffered no substantial injury; she will thus have gotten what she contracted for. Time was not of the essence of

her agreement with Benson, and it would seem that the rights of all parties can now best be conserved by requiring its substantial performance. In the [471] course of her testimony, the plaintiff declared that what she wanted was pay for the land, and in the course of their argument her counsel reiterated that the plaintiff desired nothing inequitable, but that she was entitled either to the land or the stipulated purchase price. I have therefore concluded that if the defendants will, within a reasonable time hereafter to be specified, pay to the plaintiff the amount due to her, under the terms of the Benson agreement, she will be required to execute to the defendant corporation a proper instrument of conveyance, and thereupon the relief which she specifically prays for will be denied; otherwise, in default of such payment, her prayer will be granted.

My present impression is that the record, as it now stands, does not enable me to make an intelligent finding as to the precise amount due the plaintiff under the Benson agreement, and it is possible that it will be necessary to take further evidence. However, before making any order in the premises, I will hear further from counsel, and to that end the several attorneys are requested to be present in court on Monday, July 29th, at 10 o'clock A. M.

Dated July 26th, 1912.

[Endorsed]: Filed July 26, 1912. A. L. Richardson, Clerk. [472]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

**IN EQUITY—CONSOLIDATED NUMBER
SIXTY.**

**UNITED STATES OF AMERICA and MOLLIE
CONKLIN,**

Complainants,

vs.

**R. M. COBBAN, E. B. WEIRICK, Individually,
and also as Trustee; PAYETTE LUMBER
AND MANUFACTURING COMPANY, a
Corporation et al.,**

Defendants.

Stipulation [of Facts].

It is hereby stipulated and agreed by and between the solicitors for the complainant, Mollie Conklin, and the solicitors for the defendants, R. M. Cobban, E. B. Weirick, individually, and E. B. Weirick, as Trustee, and Payette Lumber and Manufacturing Company, a corporation, that for the purpose of enabling the Court to make a finding as to the amount due the complainant, Mollie Conklin, under the Benson agreement, and to avoid the necessity of taking additional evidence herein, that the evidence shall be deemed for the purpose of entering final order in this cause, to show the following facts:

That the total acreage of land embraced in what is known as the "Monache Lands" is Nine Thousand Six Hundred (9,600) acres.

That the payment of Two Thousand Seven Hun-

dred Fifty Dollars (\$2,750.00) made to the complainant, Mollie Conklin, by Benson, on account of such agreement, shall be deemed a credit on the price that should have been paid to complainant, Mollie Conklin, for the lands involved in this action, in the ratio that the lands involved herein bears to the total acreage of the Monache Lands. [473]

This stipulation shall not be binding upon any of the parties hereto other than as to this action and shall not be used or considered as in anywise binding in any other cause or action, and it is further understood that in making this stipulation that the parties thereto shall not be deemed to waive any objection to the decision of the Court in this action or to any relief granted herein, but that this stipulation shall be solely confined to supplying facts in the record for the purpose of enabling the Court to make a finding as to the amount due complainant, Mollie Conklin, under the decision on the lands involved herein.

Dated October 29th, 1912.

WM. B. DAVIDSON and
N. E. CONKLIN,

Solicitors and of Counsel for Complainant, Mollie
Conklin.

CAVANAUGH, BLAKE, & MACLANE,
Solicitors and of Counsel for Payette Lumber and
Manufacturing Company.

RICHARDS & HAGA,
Solicitor and of Counsel for Defendants R. M. Cob-
ban, E. B. Weirick, Individually, and also E. B.
Weirick, as Trustee.

[Endorsed]: Filed Nov. 4, 1912. A. L. Richardson, Clerk. [474]

*In the United States District Court for the District
of Idaho, Southern Division.*

IN EQUITY—CONSOLIDATED No. 60.

UNITED STATES OF AMERICA and MOLLIE
CONKLIN,

Complainants,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually,
and also as Trustee; PAYETTE LUMBER
AND MANUFACTURING COMPANY, a
Corporation; JOHN A. BENSON and JO-
SEPH C. CAMPBELL,

Defendants.

Decree.

This cause coming on to be heard upon the pleadings and proofs and the stipulations of counsel as to facts deemed to be shown by the record in this case, and the Court having considered the same and the arguments of counsel, and being duly advised in the premises, it is ORDERED, ADJUDGED AND DECREED as follows:

1. That the powers of attorney as alleged in Complainant Mollie Conklin's amended bill of complaint herein, each purporting to have been executed by the complainant Mollie Conklin, and appointing the defendant, R. M. Cobban as attorney in fact for

the said complainant, and more specifically described as follows:

Power of Attorney, dated June 28, 1901, recorded in Book 2 of Powers of Attorney, page 386 of the records of Boise County, State of Idaho.

Power of Attorney, dated Sept. 27, 1900, recorded in Book 2 of Powers of Attorney, page 305 of the records of Boise County, State of Idaho. [475]

Power of Attorney, dated Feb. 28, 1901, recorded in Book 2 of Powers of Attorney, page 365 of the records of Boise County, State of Idaho.

Power of Attorney, dated April 3, 1901, recorded in Book 2 of Powers of Attorney, page 355 of the records of Boise County, State of Idaho.

Power of Attorney, dated March 1, 1901, recorded in Book 2 of Powers of Attorney, page 342 of the records of Boise County, State of Idaho.

Power of Attorney, dated Feb. 28, 1901, recorded in Book 2 of Powers of Attorney, page 384 of the records of Boise County, State of Idaho.

Power of Attorney, dated March 1, 1901, recorded in Book 2 of Powers of Attorney, page 338 of the records of Boise County, State of Idaho.

Power of Attorney, dated Feb. 13, 1901, recorded in Book 2 of Powers of Attorney, page 353 of the records of Boise County, State of Idaho.

Power of Attorney, dated Sept. 26, 1900, recorded in Book 2 of Powers of Attorney, page 349 of the records of Boise County, State of Idaho.

Power of Attorney, dated Sept. 26, 1900, recorded in Book 2 of Powers of Attorney, page 351 of the records of Boise County, State of Idaho.

Power of Attorney, dated Sept. 16, 1901, recorded in Book 3 of Powers of Attorney, page 31, of the records of Boise County, State of Idaho.

—be and each and all of said powers of attorney hereby are annulled, cancelled and declared to be utterly void and of no effect, but only in so far as they or either of them affect the title to the undivided one-half interest of the complainant Mollie Conklin in and to the lands described in said complainant Mollie Conklin's amended bill of complaint herein and hereinafter fully described.

It is further **ORDERED, ADJUDGED AND DECREED** that all Warranty Deeds purported to have been executed for and on behalf of the complainant, Mollie Conklin, by [476] the defendant, R. M. Cobban, as attorney in fact for the said Mollie Conklin, recorded in the office of the County Recorder of Boise County, State of Idaho, and purporting to convey the undivided one-half interest of the complainant Mollie Conklin in and to the lands described in the said complainant's amended bill of complaint herein, and hereinafter fully described, be and each and all of said deeds hereby are annulled, cancelled and declared to be utterly void and of no effect, in so far as they pretend to convey the undivided one-half interest of the said **Complainant**, Mollie Conklin in and to said lands.

It is further **ORDERED, ADJUDGED AND DECREED** that that certain Warranty Deed dated May 19, 1903, executed and delivered by the said defendant, E. B. Weirick, as Trustee, to the defendant, Payette Lumber and Manufacturing Company,

a corporation, which said deed was recorded in Book 24 of Deeds, at page 380, of the records of Boise County, State of Idaho, be and the same hereby is annulled, cancelled and declared to be utterly void and of no effect, in so far as the said deed pretends to convey the undivided one-half interest of the complainant Mollie Conklin in and to the lands described in said complainant Mollie Conklin's amended bill of complaint herein, and hereinafter fully described.

It is further ORDERED, ADJUDGED AND DECREED that the said defendants have not, nor has either of them, any right, title or interest in and to the said undivided one-half interest of the said complainant Mollie Conklin in the lands hereinafter described, or in any part thereof. [477]

2. That if said defendants or either of them pay to the clerk of this court, for the use and benefit of the said Mollie Conklin, within sixty days from the date hereof, the sum of Ten Thousand One Hundred Thirty Dollars and Thirty-eight Cents (\$10,130.38), together with interest thereon from the date hereof, to the date of such payment, at the rate of seven per cent (7%) per annum, also the said complainant Mollie Conklin's costs of suit herein, together with all fees and commissions of the said Clerk of this court for handling and disbursing said money, the clerk of this court, as the commissioner of this court, hereby appointed as such commissioner for such purpose, shall execute and deliver for and on behalf of the said complainant, Mollie Conklin, to the said defendant, Payette Lumber and Manu-

facturing Company, a corporation, a deed, conveying to the said defendant all the right, title and interest of the said complainant Mollie Conklin in and to the lands hereinafter fully described, the same being an undivided one-half interest, and the said clerk shall thereupon pay to the said complainant, Mollie Conklin, or her counsel, said money so paid in by the defendants or either of them.

3. Upon the failure of the said defendants to pay to the said clerk the sum of Ten Thousand One Hundred Thirty Dollars and Thirty-eight Cents (\$10,130.38), with interest thereon from the date hereof, at the rate of seven per cent per annum, and costs, within sixty days from this date, the clerk of this court, as commissioner of this court, hereby appointed for such purpose, shall execute and deliver, for and on behalf of the said defendants and each of them, to the said complainant, Mollie [478] Conklin, a deed conveying to the said complainant, Mollie Conklin, all the right, title and interest which said defendants, or either of them may have acquired in and to an undivided one-half interest in the lands and premises hereinafter described, under and by virtue of the powers of attorney claimed to have been executed by the said complainant, Mollie Conklin, and also all deeds executed under and by virtue of said powers of attorney, or either of them, and by or through which the said defendants, or either of them, claim any right, title or interest in and to an undivided one-half interest in the said premises; reserving, however, to the said defendants, as their respective interests may appear, all

such right, title or interest as they *may acquired* in and to an undivided one-half interest in said lands through the estate of Patrick Reddy, deceased.

The lands and premises affected by this decree and to be conveyed to the said defendant, Payette Lumber and Manufacturing Company, by the clerk of this court upon the payment of the sum aforesaid, and to be conveyed to the said complainant, Mollie Conklin, by the clerk of this court upon default in said payment, are situated in the County of Boise, and State of Idaho, and are fully described as follows, to wit:

The southwest quarter (SW. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$) and the southeast quarter (SE. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$) of section nineteen (19), township thirteen (13) north, range five (5) east of the Boise meridian;

The northwest quarter (NW. $\frac{1}{4}$), and southwest quarter (SW. $\frac{1}{4}$) and south half (S. $\frac{1}{2}$) of the southeast quarter (SE. $\frac{1}{4}$) of section twenty-six (26), township sixteen (16) north, of range four (4) east of the Boise meridian; [479]

The north half (N. $\frac{1}{2}$) of the northeast quarter (NE. $\frac{1}{4}$) and the southwest quarter (SW. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$), and the northwest quarter (NW. $\frac{1}{4}$) and the north half (N. $\frac{1}{2}$) of southwest quarter (SW. $\frac{1}{4}$) and the northwest quarter (NW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$) of section seventeen (17), township sixteen (16) north, of range four (4) east of the Boise meridian;

The northwest quarter (NW. $\frac{1}{4}$) and the north half (N. $\frac{1}{2}$) of the northeast quarter (NE. $\frac{1}{4}$) of

section thirty-five (35), township sixteen (16) north, of range four (4) east of the Boise meridian;

The southwest quarter (SW. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) of section twenty-nine (29), township sixteen (16) north, of range five (5) east of Boise meridian;

The northeast quarter (NE. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$) of section seven (7), township thirteen (13) north, range five (5) east of the Boise meridian;

The northwest quarter (NW. $\frac{1}{4}$) of section twenty-five (25), township sixteen (16) north, of range four (4) east of the Boise meridian;

The west half (W. $\frac{1}{2}$) of the southeast quarter (SE. $\frac{1}{4}$) and the east half (E. $\frac{1}{2}$) of the southwest quarter (SW. $\frac{1}{4}$) and lots three (3) and four (4) of section nineteen (19), township fifteen (15) north, of range four (4) east of the Boise meridian;

The southeast quarter (SE. $\frac{1}{4}$) and the east half (E. $\frac{1}{2}$) of the northeast quarter (NE. $\frac{1}{4}$) of section twenty-five (25), township fifteen (15) north, range three (3) east of the Boise meridian;

Lots one (1) and four (4) of section thirty-five (35), township twelve (12) north, of range three (3) east of the Boise meridian; [480]

Lot four (4) of section five (5) township fifteen (15) north, range four (4) east of the Boise meridian;

Lot two (2), section five (5), township fifteen (15) north, range four (4) east of the Boise meridian;

Southeast quarter (SE. $\frac{1}{4}$) of the northeast quar-

ter (NE. $\frac{1}{4}$) of section twenty-nine (29), township sixteen (16) north, range four (4) east of the Boise meridian;

Lot four (4) and the south half (S. $\frac{1}{2}$) of the northwest quarter (NW. $\frac{1}{4}$) of section four (4), township fifteen (15) north, of range four (4) east of the Boise meridian;

Lot three (3) of section five (5), township fifteen (15) north, range four (4) east of the Boise meridian;

Lot two (2) of section six (6), township fifteen (15) north of range four (4) east of the Boise meridian;

Lot one (1) of section six (6), township fifteen (15) north, of range four (4) east of the Boise meridian;

The east half (E. $\frac{1}{2}$) of the southeast quarter (SE. $\frac{1}{4}$) and the southwest quarter (SW. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$) of section thirty-one (31), township sixteen (16) north, of range four (4) east of the Boise meridian;

The south half (S. $\frac{1}{2}$) of the southeast quarter (SE. $\frac{1}{4}$) of section thirty-two (32), township sixteen (16) north, range four (4) east of the Boise meridian;

The southwest quarter (SW. $\frac{1}{4}$) of section twenty-eight (28), in township sixteen (16) north, range four (4) east of the Boise meridian;

The southeast quarter (SE. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$) of section thirty-one (31), township sixteen (16) north, of range four (4), east of the Boise meridian; [481]

The southwest quarter (SW. $\frac{1}{4}$) of section thirty-two (32), township sixteen (16) north, of range four (4) east of the Boise meridian;

The southeast quarter (SE. $\frac{1}{4}$) and the east half (E. $\frac{1}{2}$) of the northeast quarter (NE. $\frac{1}{4}$) of section twenty-six (26), township thirteen (13) north, range three (3) east of the Boise meridian;

Lot one (1) and the southeast quarter (SE. $\frac{1}{4}$) of the northeast quarter (NE. $\frac{1}{4}$) of section two (2), township twelve (12) north, of range three (3) east of the Boise meridian;

The west half (W. $\frac{1}{2}$) of the southwest quarter (SW. $\frac{1}{4}$) of section one (1), township twelve (12) north, of range three (3) east of the Boise meridian;

The north half (N. $\frac{1}{2}$) of the northeast quarter (NE. $\frac{1}{4}$) of section twenty-nine (29), township fifteen (15) north, range four (4) east of the Boise meridian;

The northeast quarter (NE. $\frac{1}{4}$) of the southeast quarter (SE. $\frac{1}{4}$) of section thirty-one (31), township fifteen (15) north, of range four (4) east of the Boise meridian;

The west half (W. $\frac{1}{2}$) of the southwest quarter (SW. $\frac{1}{4}$) and the southeast quarter (SE. $\frac{1}{4}$) of southwest quarter (SW. $\frac{1}{4}$) of section thirty-two (32), township fifteen (15) north, range four (4) east of the Boise meridian;

The south half (S. $\frac{1}{2}$) of the southeast quarter (SE. $\frac{1}{4}$) and the south half (S. $\frac{1}{2}$) of the southwest quarter (SW. $\frac{1}{4}$) and the northwest quarter (NW. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) of section five (5) township fifteen (15) north, range four (4)

east of the Boise meridian;

The southeast quarter (SE. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$) of section seven (7), township thirteen (13) north, range five (5) east of the Boise meridian; [482]

4. Should an appeal from this decree be perfected by the said defendants, or either of them, within sixty days from this date, and a supersedeas be approved by this Court, then and in that event the said defendants or either of them shall have thirty days from and after the filing of the mandate of the court of appeals with the Clerk of this court in which to do the act or acts required to be done by them hereunder, and in which to pay the said sum or sums to be paid hereunder, and the authority of the said commissioner to make said conveyances shall be extended accordingly, and the sum or sums so to be paid shall bear interest at the rate of seven per cent (7%) per annum from the date hereof until paid.

5. That the bill of complaint of the United States of America be and the same hereby is dismissed.

6. That the complainant, Mollie Conklin, may have judgment for her costs herein, taxed at \$227.65.

Dated Nov. 4, 1912.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed Nov. 4, 1912. A. L. Richardson, Clerk. [483]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

IN EQUITY—No. 255.

MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually
and also as Trustee, and PAYETTE LUM-
BER & MANUFACTURING COMPANY,
a Corporation,

Defendants.

(Consolidation with No. 49 as Consolidated No. 60.)

Stipulation Relative to Record on Appeal.

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that in order to save expense in the printing and certification of the record, and to avoid encumbering the record with papers and documents not pertinent to the questions involved on appeal, the following portions of the record, and no more, the same being sufficient to show the errors complained of and the evidence relating thereto, shall be transcribed, certified and transmitted to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit by the Clerk of the United States District Court for the District of Idaho, under the appeal of appellants herein, to wit:

1. Complainant's amended bill of complaint.
2. Separate answer of Payette Lumber & Manufacturing Company, filed May 1st, 1909.

3. Replication of complainant to above answer.
4. Answer of defendants Cobban and Weirick.
5. Replication of complainant to above answer.

[484]

6. Deposition of Mrs. Mollie Conklin, Mrs. M. C. Olcese, and N. E. Conklin, taken before Robert M. McCracken at Boise, Idaho, on or about January 3, 1910, and filed January 17, 1910.

7. Deposition of H. M. Wright, R. B. Swayne, and Mrs. Sybil J. Coleman, taken before Charles R. Holtman on March 21, 1910, at San Francisco, and filed November 4, 1911; but the commission to take said deposition may be omitted, it being hereby stipulated and agreed that the same was properly taken and pursuant to commission duly authorizing the taking thereof.

8. Deposition of Joseph C. Campbell, J. A. Benson, James H. Lavenson, and Clara E. Glover, taken before Flora Hall at San Francisco on April 28th, 29th and 30th, and May 2d, 1910, and filed October 18, 1911.

9. Deposition of R. M. Cobban, E. B. Weirick and E. M. Hoover, taken before Robert M. McCracken at Boise, Idaho, on June 24, 1910, and filed June 29, 1910.

10. All letters and copies of letters and other exhibits, excepting deeds and powers of attorney, which are hereinafter separately provided for. It is expressly agreed, however, that no exhibit which has been copied into the depositions above mentioned, or any or either of them, shall again be set out, it being the intention to hereby avoid repetition or the set-

ting out of an exhibit more than once in the record.

11. The power of attorney marked Plaintiff's Exhibit "D," the same being substantially the same as the other powers of attorney, excepting as to the description of the land used as a base or to be conveyed thereunder, and it shall be unnecessary to set out in the record a description of any other [485] power of attorney; but it shall be sufficient to give a synopsis of the others substantially as follows: Power of Attorney, Plaintiff's Exhibit, Dated, signed by Acknowledged on the day of, 19. . . ., before at

12. Deed from E. B. Weirick, Trustee, to Payette Lumber & Manufacturing Company, dated May 19, 1903 (Defendants' Exhibit "A"); but in lieu of the description of the lands therein set forth, it shall be sufficient to insert the following: "Conveys lands described in the decree and other lands; description omitted pursuant to stipulation of counsel."

13. This stipulation.

14. Opinion of Court filed July 26, 1912.

15. Stipulation of counsel dated October 29, 1912, and filed November 4, 1912.

16. Decree.

17. All papers filed for perfecting the appeal (Assignment of Errors, Petition for Appeal, Bond, and Citation, and all orders made in connection therewith).

It is hereby further stipulated and agreed that all original exhibits introduced in the above-entitled cause shall be transmitted to the Clerk of the United States Circuit Court of Appeals, for the Ninth Cir-

cuit, before the hearing of the cause in said court, and the same may be used upon the argument or at the hearing of said cause in said court, and shall be considered a part of the record on appeal therein as fully and to the same extent as if transcribed and printed in the record. And appellants shall have the right, and they may be required so to do by appellee (complainant) if deemed necessary, to [486] print as part of the record on appeal any exhibit and any other part of the record not hereby expressly authorized to be transcribed.

Dated this 4th day of December, 1912.

N. E. CONKLIN and

WM. B. DAVIDSON,

Solicitors for Complainant.

CAVANAUGH, BLAKE & MacLANE,

Solicitors for Defendant, Payette Lumber & Manufacturing Company.

J. H. RICHARDS and

OLIVER O. HAGA,

Solicitors for Defendants, R. M. Cobban and E. B. Weirick.

[Endorsed]: Filed December 5, 1912. A. L. Richardson, Clerk. [487]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

IN EQUITY—No. 255.

MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually
and also as Trustee, and PAYETTE LUM-
BER & MANUFACTURING COMPANY,
a Corporation,

Defendants.

(Consolidated with No. 49 as Consolidated No. 60.)

Assignment of Errors.

And now comes the defendants, R. M. Cobban, E. B. Weirick, individually and also as Trustee, and the Payette Lumber & Manufacturing Company, a corporation, by their solicitors, and having prayed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree entered in the above cause on the 4th day of November, A. D. 1912, say that the said decree, made and entered as afore-said, is erroneous and unjust to these defendants, and particularly in this:

1. Because complainant did not show that these defendants, or any or either of them, were guilty of any fraud or wrongdoing in purchasing or acquiring the land in the State of Idaho, which complainant sought to recover in her bill of complaint, or in purchasing or acquiring the scrip, deeds or powers of attorney under which or through which defendants, or

either of them, claim title to said land. And complainant failed to show any collusion, confederation [488] or conspiracy between these defendants, or either of them, and any other person or persons whomsoever for the purpose of acquiring title to said lands or defrauding complainant thereof.

2. Because complainant had been guilty of laches and was not entitled to equitable relief, or any relief, in said suit.

3. Because the defendant, Payette Lumber & Manufacturing Company, was a *bona fide* purchaser for a valuable consideration, without notice of any claim of complainant.

4. Because the defendants, R. M. Cobban and E. B. Weirick, individually and as Trustee, were the *bona fide* purchasers, in good faith, for a valuable consideration of all the right, title and interest of complainant in the California lands, known as the "Monache" lands, and of the lands in the State of Idaho which complainant in her bill of complaint seeks to recover in this suit.

5. Because if any wrong, injury or damage has been sustained by complainant under the record in this cause, it was due to her own laches, carelessness and negligence, and not through any fault or wrongful act of these defendants, or any or either of them.

6. Because the decree and the relief granted complainant is not within the issues framed by the pleadings, and is not sustained by the record, and is inequitable and unjust to these defendants.

7. Because the District Court erred in ordering, adjudging and decreeing that the powers of attorney

from complainant, Mollie Conklin, and described in her amended bill of complaint and in said decree, appointing the defendant [489] R. M. Cobban as attorney in fact for said complainant, be annulled, cancelled and declared utterly void and of no effect.

8. Because the District Court erred in ordering, adjudging and decreeing that all warranty deeds purporting to have been executed for and on behalf of complainant by the defendant R. M. Cobban, as her attorney in fact, be annulled, cancelled and declared to be utterly void and of no effect.

9. Because the District Court erred in ordering, adjudging and decreeing that the warranty deed dated May 19, 1903, from defendant Weirick, as Trustee, to the defendant Payette Lumber & Manufacturing Company be cancelled, annulled and declared void and of no effect.

10. Because the District Court erred in decreeing that these defendants, or either of them, had no right, title or interest in the lands described in the decree and situated in the State of Idaho.

11. Because the District Court erred in adjudging and decreeing that these defendants should pay to complainant the sum of Ten Thousand One Hundred Thirty and 38/100 Dollars (\$10,130.38), with interest at seven per cent (7%) per annum, and costs of suit before they would be entitled to hold or enjoy the lands described in the decree.

12. Because the District Court erred in its decision in holding and concluding that complainant did not acknowledge before a notary public the instruments through which defendants deraign title to the

land in question.

13. Because the District Court erred in its decision in holding and concluding that there was no evidence [490] in the record to support the theory that complainant ever authorized or ratified the delivery of any power of attorney to “convey,” without the prior payment to her of the full purchase price agreed upon.

14. Because the District Court erred in its decision in holding and concluding that complainant neither expressly nor impliedly authorized the delivery to Benson of the instruments executed by her for the purpose of conveying the said Monache Lands, or lands selected in lieu thereof.

15. Because the District Court erred in its decision in holding and concluding that the delivery of the instruments executed by complainant was not in accordance with the authorization or consent of complainant, or anyone authorized to act for her.

16. Because the District Court erred in its decision in holding and concluding that complainant did not know and had no reason to suspect that the powers of attorney in question had been delivered to Benson until after the sale to these defendants had been consummated, and that she acted with reasonable diligence in apprising defendants of her repudiation of the acts of Benson and others acting for her in delivering said instruments.

17. Because the District Court erred in its decision in holding and concluding that the revocation of the powers of attorney, filed January 16, 1903, in any way affected the rights of these defendants.

18. Because the District Court erred in its decision in holding and concluding that complainant had neither expressly nor impliedly ratified the delivery of the instruments, through which defendants deraign title, or proclaimed in a proper manner with reasonable diligence her unwillingness to be bound thereby. [491]

19. Because the District Court erred in its decision in holding and concluding that complainant would have accepted payment for the lands in question, or the so-called Monache lands, at \$1.90 per acre for her undivided one-half interest from the said Benson during the years 1901 and 1902.

20. Because the District Court erred in its decision in holding and concluding that the course pursued by complainant in her dealings with Benson and Campbell, and in other matters leading up to the commencement of this suit, was not such as to debar complainant from seeking relief in a court of equity.

21. Because the District Court erred in its decision in holding and concluding that neither of these defendants are protected under the rule, that where one of two innocent persons must bear the loss due to the injurious act of another, he must sustain the loss who has put it within the power of such other person to do the wrong.

22. Because the District Court erred in its decision in holding and concluding that the power of attorney delivered to defendant Cobban, and executed by complainant, did not operate to confer upon said defendant the power to convey the land in question.

23. Because the District Court erred in its deci-

sion in holding and concluding that the defendant Cobban did not, under the facts and circumstances disclosed by the record in this case, have authority to insert his name in the powers of attorney executed by complainant.

24. Because the District Court erred in its decision in holding and concluding that the payments by defendant Cobban and his associates to Benson are in no way binding upon complainant, and that said Benson was not the agent of complainant. [492]

25. Because the District Court erred in its decision in holding and concluding that the said Benson was as much the agent of the defendant Cobban as of the complainant.

26. Because the District Court erred in its decision in holding and concluding that the instruments executed by complainant and delivered to the defendant Cobban and his associates by Benson upon payment of the stipulated purchase price, and through which title is deraigned by these defendants to the lands in question, were inoperative for any reason.

27. Because the District Court erred in its decision in holding and concluding that Benson was to receive possession of the deeds and instruments in question only after he had paid in full the purchase price, and that these defendants were bound to know such fact and to know that said instruments had not been delivered by complainant, either in accordance with her agreement with Benson and Campbell, or otherwise.

28. Because the District Court erred in its deci-

sion in holding and concluding that Campbell was the attorney or agent of complainant for any purpose.

29. Because the District Court erred in its decision in holding and concluding that in purchasing the scrip in question defendants did not exercise due or proper care and caution.

30. Because the District Court erred in its decision in holding and concluding that the universal custom, in handling scrip of the kind in question, of permitting the purchaser to insert in the powers of attorney to select and to convey the name of an agent of his own selection, would not operate to protect these defendants in the purchase of the scrip in question.

31. Because the District Court erred in its decision in holding and concluding that the fact that the Reddy estate [493] owned the other undivided one-half interest in the lands in question, would in any way or for any purpose put these defendants, or either of them, on notice of any of the fraudulent acts alleged to have been committed against complainant, or that the instruments executed by her had been executed unwittingly or unintentionally, and had not intentionally been delivered by complainant.

These defendants, however, expressly reserve to themselves all benefit and advantage of so much of said decree from which an appeal is prayed in this cause as dismisses the bill of complaint and holds that the United States of America is not entitled to any relief in that certain suit wherein the United

States is complainant and these defendants and John A. Benson and Joseph C. Campbell are defendants, the same being Cause No. 49, and being the identical suit which was consolidated with the suit of complainant herein, said suits being thereafter known as Consolidated No. 60.

WHEREFORE, these defendants pray that the portions of said decree granting any relief to the complainant herein be reversed, and the District Court directed to dismiss complainant's bill.

RICHARDS & HAGA,

Solicitors for Defendants.

Service of the foregoing Assignment of Errors and receipt of copy thereof, admitted this 13th day of December, 1912.

N. E. CONKLIN &

WM. B. DAVIDSON,

Solicitors for Complainant.

[Endorsed]: Filed Dec. 13, 1912. A. L. Richardson, Clerk. [494]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

IN EQUITY—No. 255.

MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually and
also as Trustee, and PAYETTE LUMBER &
MANUFACTURING COMPANY, a Corpora-
tion,

Defendants.

(Consolidated with No. 49 as Consolidated No. 60.)

Petition for Appeal and Order Allowing Appeal.

The above-named defendants, conceiving themselves aggrieved by the decree made and entered on the 4th day of November, A. D. 1912, in the above-entitled cause, do hereby appeal from said Order and Decree to the United States Circuit Court of Appeals for the Ninth Circuit, except from so much of said decree as dismisses the bill of complaint of the United States in the suit against the above-named defendants and others, which was consolidated and tried with the suit of the above-named complainant, for the reasons specified in the Assignment of Errors, which is filed herewith, and defendants pray that this appeal may be allowed and that Citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit;

And these defendants desiring to supersede the execution of the decree, tender bond in such amount as the Court [495] may require for such purpose, and pray that with the allowance of the appeal a supersedeas be issued.

RICHARDS & HAĞA,

Solicitors for Defendants.

And now, to wit, on the 13th day of December, 1912, it is ORDERED that the petition be granted and the appeal be allowed as prayed for, the same to operate as a supersedeas upon the petitioners filing a bond in the sum of Twelve Thousand Dollars

(\$12,000.00), with sufficient sureties, to be conditioned as required by law.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: Filed Dec. 13, 1912. A. L. Richardson, Clerk. [496]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

IN EQUITY—No. 255.

MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually and
also as Trustee, and PAYETTE LUMBER &
MANUFACTURING COMPANY, a Corpo-
ration,

Defendants.

(Consolidated with No. 49 as Consolidated No. 60.)

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,
That we, E. B. WEIRICK, Trustee, as Principal,
and the UNITED STATES FIDELITY AND
GUARANTY COMPANY, a corporation organized
under the laws of the State of Maryland, as Surety,
are held and firmly bound unto Mollie Conklin, the
above-named complainant, in the penal sum of
Twelve Thousand Dollars (\$12,000.00), to be paid
to the said Mollie Conklin, her executors, adminis-
trators or assigns; to which payment well and truly
to be made we bind ourselves, our heirs, executors,

administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals, and dated this 13th day of December, in the year of our Lord, one thousand nine hundred and twelve.

WHEREAS, the above-named defendants, R. M. Cobban, E. B. Weirick, individually and also as Trustee, and the Payette Lumber & Manufacturing Company, a corporation, have prosecuted an appeal to the United States Circuit Court of [497] Appeals for the Ninth Circuit to reverse the decree in the aforesaid suit, made and entered in the said United States District Court for the District of Idaho, Southern Division, on the 4th day of November, A. D. 1912.

NOW, THEREFORE, the condition of this obligation is such, that if the above-named defendants and appellants shall prosecute their said appeal to effect, and answer all damages and costs, if they fail to make their said plea good, then the above obligation to be void; else to remain in full force and virtue.

IN WITNESS WHEREOF, The said E. B. Weirick, Trustee, has caused his name to be hereunto subscribed, and the said United States Fidelity and Guaranty Company, Surety, has caused its name to be hereunto subscribed, and its corporate seal af-

fixed, by its attorneys in fact thereunto duly authorized by its Board of Directors.

E. B. WEIRICK,

E. B. WEIRICK, Trustee. [Seal]

UNITED STATES FIDELITY AND
GUARANTY COMPANY.

[Corporate Seal] By W. D. McREYNOLDS,
Its Attorney in Fact.

J. T. PENCE,

Its Attorney in Fact.

The foregoing bond is hereby approved to operate as a supersedeas, and all proceedings in the District Court under the decree appealed from are hereby stayed.

Dated Dec. 13, 1912.

FRANK S. DIETRICH,

District Judge.

[Endorsed]: Filed Dec. 13, 1912. A. L. Richardson, Clerk. [498]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

IN EQUITY—No. 255.

MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually and
also as Trustee, and PAYETTE LUMBER &
MANUFACTURING COMPANY, a Corporation,

Defendants.

(Consolidated with No. 49 as Consolidated No. 60.)

Order Relative to Exhibits on Appeal.

On motion of Messrs. Richards & Haga, solicitors for defendants, it is ORDERED that in addition to the transcript of the record on appeal in this suit, that the Clerk of this Court transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, all the original exhibits in this suit, to be by him safely kept and returned to this Court upon the final determination of the appeal in this suit in said Circuit Court of Appeals.

Dated this 24th day of December, 1912.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed Dec. 24, 1912. A. L. Richardson, Clerk. [499]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

IN EQUITY—No. 255.

MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually and
also as Trustee, and PAYETTE LUMBER &
MANUFACTURING COMPANY, a Corpo-
ration,

Defendants.

(Consolidated with No. 49 as Consolidated No. 60.)

Citation.

The United States of America,—ss.

To Mollie Conklin, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty days from the date of this Writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the District of Idaho, Southern Division, wherein Mollie Conklin is complainant and R. M. Cobban, E. B. Weirick, individually and also as Trustee, and the Payette Lumber & Manufacturing Company, a corporation, are defendants, to show cause, if any there be, why the judgment, order or decree in said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf;

WITNESS, the Honorable EDWARD DOUGLAS WHITE, Chief [500] Justice of the Supreme Court of the United States of America, this 13th day of December, one thousand nine hundred and twelve, and of the Independence of the United States, the one hundred and thirty-seventh year.

FRANK S. DIETRICH,
United States District Judge, for the District of
Idaho.

[Seal] Attest: A. L. RICHARDSON,
Clerk.

Service of the foregoing Citation and receipt of

a copy thereof, admitted this 13th day of December, 1912.

N. E. CONKLIN and
WM. B. DAVIDSON,
Solicitors for Complainant. [501]

[Endorsed]: Con'd. No. 60. In the District Court of the United States for the District of Idaho, Southern Division. Mollie Conklin, Complainant, vs. R. M. Cobban et al., Defendants. Citation. Filed December 13, 1912. A. L. Richardson, Clerk. [502]

Return to Record.

And thereupon it is ordered by the Court that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

[Seal] Attest: A. L. RICHARDSON,
Clerk. [503]

[Certificate of Clerk U. S. District Court to
Transcript of Record, etc.]

*In the District Court of the United States for the
District of Idaho, Southern Division.*

R. M. COBBAN, E. B. WEIRICK, Individually,
and also as Trustee, and PAYETTE LUM-
BER & MANUFACTURING COMPANY, a
Corporation,

Appellants,

vs.

MOLLIE CONKLIN,

Appellee.

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 504 inclusive, to be full, true and correct copies of the pleadings and proceedings in the above-entitled cause in accordance with Stipulation filed on December 5th, 1912, except the original exhibits which are transmitted by order of Court, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the record herein amounts to the sum of \$278.20, and that the same has been paid by the Appellant.

Witness my hand and the seal of said District Court, affixed at Boise, Idaho, this 27th day of December, 1912.

[Seal]

A. L. RICHARDSON,

Clerk. [504]

[Endorsed]: No. 2236. United States Circuit Court of Appeals for the Ninth Circuit. R. M. Cobban, E. B. Weirick, Individually and also as Trustee, and the Payette Lumber & Manufacturing Company, a Corporation, Appellants, vs. Mollie Conklin, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Idaho, Southern Division.

Filed December 31, 1912.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

